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An expoſicion of

the kinges prerogatiue collected *out of the great abridgement of Iuſtice Fitzherbert* and other olde writers of the lawes of Englande by the right woꝛſhipfull ſir William Staunford Knight, lately one of the Iuſtices of the Queenes maieſties court of comon pleas:

42571

Whereunto is annexed the Proces to the ſame Prerogatiue appertaining.

1567.

To the right honorable ſir Nicholas Bacon knight, lord keeper of the great ſeale of Englande: Richard Tottel wiſheth health and long lyfe, with encreaſe of honour.

NOt long ſythens, right honorable, and my eſpeciall good Lord, there was deliuered to mee A collection of the kinges prerogatiue, whiche Maiſter Staunforde had gathered and dedicated vnto your honour: which woorke bycauſe it is thought well of by the Sages of the lawe, and well worthy to be printed, I am therefore the bolder to put it in print, and publiſhe the ſame. And although the ſaide Maiſter Staunforde verie ſhortlye after that hee hadd dedicated the ſame booke vnto your Lordſhip, were for his wiſedome, grauitie, learning, integritie, & ſyncere dealinge, aduaunced to be a Iudge in the chiefe Court of this Realme for common plees, and for his good ſeruice therein was by iuſt deſert made knight, and albeit that your Lordſhip alſo ſythens that tyme haue achieued the place,

title and degree of high honour by the iudgemẽt & calling of the Queenes moſt excellent maieſty. Yet I haue printed the Epiſtle dedicatorie of the ſaid woork, in the ſame termes that the Authour thereof vſed, and with the ſame ſtile that your honour, and he both then had, when he dedicated the ſaid woorke vnto your Lordſhip, as a Monument and token of the mutuall & long continued amitie betwene you: moſte humbly praieng your Lordſhip to accept in good parte, accordinge to your accuſtomed goodnes, this my boldnes with your honour, and to pardon the ſame.

This 20. day of Nouember.

Your honours moſt bounden
Richard Tottell.

Guilielmus Staunfordus Nicholao Bacono Regie Maieſtati a Tutelarum procuratione. S. D. P.

QVanquam Anglicanę leges (amice ſingularis) haud minorem merentur laudem, quā Iudex Forteſcueus libro de earum laudibus conſcripto, eis tribuere videtur: tamen quoniam earum cognitio tam procul nobis diſſita ſit, profectio ad eam tam ſupra modum longa ac operoſa, tū vię et ſemitę tam aſperę, tā ſalabroſę, tam inamęnę ſint, vt ad ſui aditum pauciſſimos inuitet, quā plurimos abſterreat, vel potius auertat: Optarem in tanta iuriſperitorum turba: quam Anglia nunc habet, aliquid excogitari poſſe, leuandis legum Studioſis, prolongo iſto ac moleſto itinere. Vt propiore ac commodiore via ducti, valerent et proficiſcēdo & abſoluto itinere, alias deguſtare literas: quibus, non ſolum legalem ſcientiam multum illuſtrarent, ſed et munia eis a Regia Maieſtate mandata, tum pulchriūs, tum honorificentiūs, adminiſtrarent. Id quod (meo iudicio) cōmodiſſimē fieri poſſit, ſi tituli, in magna (quā vocant) Fitzherberti Epitome, vel a Iudicibus noſtris, vel ab aliis legum peritis, ſedulo forent euoluti atq; elaborati, hoc eſt, omni titulo, in claſſes ac ordines diſtributo, ſingulis eorum actis ac cauſis, certę legum regulę ac Maximę preſiderent. *Exempli* gratia. In Breuis titulū cadere poſſunt hec videlicet, Forma, vitioſa Nomendatura, ſeu pſonę, ſeu vici, Eadē res bis petita, Obitus vel actoris vel rei, Nominis alterutriūs partis pēdente lite mutatio, ceteraq; huiuſmodi quę nunc nimis longo titulo ſperſa tam tumultuariē reperiuntur: vt multo maiorem tum eruditionem, tum ſudores, tum vigilias, exigat eorū diſtributio, quā rectē diſtributa

ediſcere. Et tamen non poſſum committere, quin tantę epitomes ſcriptorem: vel ampliſſimis laudibus veham, qui ſũma ſua doctrina, exactiſſimo iudicio, immenſis ac pene dixerim exanclatis laboribus, tam numeroſam voluminum multitudinem, quibus vel legendis vix vnius hominis ætas (quantumlibet viuacis) ſufficeret: in vnũ dũtaxat volumen atq; adeo epitomen contraxit, vt nunc noſtratibus iuriſperitis modo volentibus minima opera componere liceat: quippiam, tam facile, tam vtile, tam frugiferũ: vnde ſtudioſi dimidiato tempore quo antehac legibus obdormire ſint viſi: cum maturiorẽ, tum certiorem noticiam aſſequerentur, Quo nomine: rei mihi tam vehementer expetitę: typum quendam propoſui, ac quaſi primas inde lineas duxi, Recipiens ad me, huiuſmodi p̃dictorum titulos: qui Regiam prerogatiuam ſpectant: non quod ſum aliqua ex parte dignus, rem tam eximiam, tamque ſublimem tractare: nec quod eruditione id preſtare valeam: Siquidem de meo, nihilo plus hic eſt, quã collectio ac diſpoſitio tantum earum rerum, quę eiſdem titulis includuntur: Sed magis quod iſtud meum commentitium, qualecunque ſit, tibi ſemper deſtinaueram, id quod in nullum alium preter hunc titulum, cõmodè experiri potui, tum quod ad magiſtratum tuum Regij procuratoris tutelarum, maxime partinere videbatur, tum quod cõpertum habeo, te iuriſprudentię incũbentem, hũc quem propoſui morem hactenus obtinuiſſe: quod fecit, vt reliquos tuos contemporaneos eruditione: multis ſtadijs precurras: tum denique quod tuum iudicium ſuper hiſce rebus in quibus aſſiduè verſaris ac exercitaris requiró. Certus mé hic rem habere cum homine tam amico, vt ſi quid lectione dignum inuenerit: id pergratè ſit accepturus, ſin minus certè æqui boniq; conſulturus, reliquum quod habet vitij: emendaturus, aut ſaltem ad id coniuere velle cõfido. Proinde iſtud, quicquid eſt, tibi nuncupo, lege, ac pro tua voluntate fruere.

Vale.

To the right woorſhipfull and his ſinguler frinde Nicholas Bacon the kinges Attourney of his court of wardes and Liuereys William Staunford wiſheth helth, long lyfe and proſperous ſucceſſe.

(.·.)

Albeit the lawes of Englande right ſinguler frinde are woorthye no leſſe honour, praiſe and commendacion, then Juſtice Forteſcue in his booke written of the praiſes thereof doeth attribute and geue vnto them, yet foraſmuch as the knowledge of the ſaid lawes is placed ſo farre of, the iourney thereunto ſo exceading long and painefull, & the waies and pathes ſo rugged and vnpleaſant: I would wiſh that amonges ſuch plenty of learned men as be at this day ſome thing were deuiſed to help the ſtudēts of their lōg iorney that they (being led a more nere & pleſant way) might both as they went and after they came to theire iorneis end gather ſome other knowledge, not onely therewith to garniſh theire owne ſcience, but alſo the better to ſerue in ſuch honorable rome as they be called to ſerue the kinge and ſoueraigne lord in, which thing might well come to paſſe after my poore mynde, if ſuch titles as be in the great abrigement of Juſtice Fitzherbert were by the Judges or ſome other learned men labored & ſtudied, that is to ſay, euery title by it ſelfe by ſpeciall diuiſions digeſted, ordered and diſpoſed in ſuche ſort as that all the iudiciall actes and caſes in the ſame might be brought & appere vnder certeine principles, rules and groundes of the ſaide lawes. As for example, vnder the title of Briefe might come theſe titles, Fourm, Miſnaming of the perſō, Mynaming of the town, One thing

twise demaunded, death of the plaintifes syde, death of the defendauntes syde, chaunginge of the name of the plaintife or defendaunt hanginge the sute, with manye suche other lyke which nowe as thinges scatered abroade and out of order lye hidden within the saide longe tytle that it requires muche more learninge, paynes and Studye well to order and dispose the matter in the same, then (after order made) to learne and beare it awaye. And yet surelye there cannot bee to muche praise and commendacion geuen vnto that greate learned man the Auctour of the saide great abridgement, which by his greate learninge, exact iudgement and intollerable paynes, brought suche an infinite nomber of volumes (to the readynge whereof A mans lyfe woulde scant haue sufficed) to a muche more lesse and narower cõpasse, whereupon nowe these learned men with lesse paynes might compile the thing that should be so easy so profitable and fruitfull to the studentes thereof, that in halfe those yeares they now lye sleping in, they might come to a ryper and more certeine knowledge and better iudgement: For which cause I haue drawen as it were a patern of the thinge I so muche desire takinge vppon mee such tytles as appertaine vnto the kinges prerogatiue, not as one in anye parte woorthy to treat of a thynge so high & precious as that is or in learnynge sufficient or hable therunto (for of myne owne here is nothinge more then onelye a collection and disposition of that that is alreadye contayned in the saide tytles) but rather because I haue alwayes meant this my deuyse vnto you, which I coulde not doe or practise so well vppon anye tytle as vppon this that appertayneth vnto your office of Attourneyshippe of the wardes and liueries, partly for that I knowe your selfe to haue obserued the like order in your owne Study, whiche in fewe yeres hath gotten you aboue other the greate learnynge you haue, partlye also for that I couet your Iudgement in

these

theſe matters wherewith you be daylye in bre and exerciſed, knowinge that I haue to doe herein with one ſo muche my frynde that if there be any thinge worthie the readinge he will take it thankfullye, and if not ſo, well, yet will hee take it in good part, the reſt that is amiſſe he will beare it with me. This therefore what ſoeuer it bee I dedicate vnto you, read it, peruſe it and make of it what you will. Fare you well, from Greis Inne the firſt of Nouember.

Anno. 1548.

(.)

DOminus Rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſeruicium militare de quibus ipſi tenentes fuerunt ſeiſiti in dominico ſuo vt de feodo die quo obierunt de quocunque tenuerint per huiuſmodi ſeruitium dum tamen ipſi tenuerunt de rege aliquod tenementum ab antiquo de corona vſque ad legittimam ætatem heredis: Exceptis feodis Archiepiſcopi Cantuarienſis, Epiſcopi dunolm̃ inter Tine et Teſe, feodis Com̃ et Baronum de marchia de terris in marchia vbi breuia domini regis non currunt. Et vnde predict' archiepiſcopus, ep̃us Com̃ et Baroñ habeant huiuſmodi cuſtodiã licet alibi tenuerunt de Rege.

Prerogatiua is as muche to ſaye as a priuilege or preeminence that any perſon hath before another whiche as it is tollerable in ſome, ſo it is moſt to be permitted and allowed in a prince or ſouerayne gouernor of a realme. For beſydes that, that he is the moſt excellenteſt & worthieſt parte or mẽber of the comon body of the welth, ſo is he alſo (through his good gouernaunce) the preſeruer, nourither, and defender of all the people beeing the reſt of the ſame bodye. And by his great trauailes ſtudie and labours they enioy not onlye their lifes landes and goodes, but all that euer they haue beſides in reſt peace and quietnes, as Seneca ſayethe: Omnium domos illius vigilia defendit, omnium ocium illius labor, omnium delicias illius induſtria, omnium vacationem illius occupatio. For which cauſe the lawes do attribute vnto him all honour, dignitie, prerogatiue and preeminence, which prerogatiue doth not onely extend to his owne perſõ, but

Seneca de conſolat' ad Polibium

but also to all other his possessions goods and cattals. As that his person shalbe subiect to no mans suite, his possessions cannot be taken from him by anye violence or wrongfull disseisin, his goods & cattals are vnder no tribute, tolle nor custome, nor otherwise distrein able: with an infinite nomber of prerogatifes more, whiche were to tedious here to recite. Howbeit forsomuch as in euery realme, the kinges prerogatifes are no small parte and portion of the profites and commodities of the Crowne of the same, & namelye within this realme of Englande, it hath bene thought good heretofore to declare and setfurth in writing certeine of the most highest and weightiest matters and articles touching the said prerogatifes. And hereupon was there a declaration made in writing by auctoritie of parliament holden in the.17. yere of the raigne of kinge Edw.the.2.the beginning wherof is in maner and fourme as is aboue written: Howbeit this parlament maketh no part of the kinges prerogatife, but long time before it had his being by thorder of the commen law, as plainlye may appeare by them that haue written before the making of the saide statute of prerogatife. For Glanuill, who was chiefe Iustice in kynge Henry the.2. dates writing of this matter saith in thys wise.

Glanu. li.7o

Notandum quod si quis in Capite de dño rege tenere debet, tunc eius custodia ad dominum regem plene pertinet, siue alios dños habere debet heres siue non, quia dominus rex nullum habere potest parem, multo minus superiorem.

Also Bracton whiche wrote in the time of the latter raigne of king Henry the.3. saieth.

Bracton. li.1 de custod'et marit' dominorum.

Si aliquis heres terram aliquam tenuerit de domino rege in capite siue alios dominos habuerit siue non dominus rex aliis prefertur in custodia heredis siue ipse ab aliis prius feoffatus fuerit vel posterius, cum rex parem non habet in regno suo. Both these writers doe not onely agree in euery point, but also geue a reason why the kinge shoulde haue the prerogatiue conteined in this first

chapter

chapter. Also Britton, an other old writer which wrote his booke in king Edwarde the firſt name ſayeth, des heirs neqdedent ſi ils y eyent aſcuns qui aunceſtre moruſt ſeiſie de aſcun terre tenu de nous en chief des aunciens demeanes de noſtre corone voions auer les gardes de touts les terres dõt appent que deiuent deſcendra ceux heirs come lour heritage ouesque touts les blees en teles terres troues maintefoits de qui fees que les terres ſont. Britton here not only agreeth vñ the other, but alſo geueth the king the corne growing vpon the grounds which the kinges tenant holdeth at the tyme of his death. Also in the great Abridgement of Fitzherbert you ſhal find in the time of king Henry the thirde written in this manner. Nota quod lex anglię et conſuetudo eiuſdẽ eſt quod a quibuſcunq; aliquis feoffatus fuerit dum tamen a domino Rege aliquo tempore feoffatus fuerit per tenementum qd' tenetur per ſeruiẽ militare, quod dñs rex habebit cuſtod' omniũ terrar' et tenemẽtorũ tã de feoffamẽto aliorũ quã de feoffamento proprio. A.21.H.3. in Fitz.ti. Prerogat'. P.26. &. P.25.

Which tert if a man will any thing weſt he may make the kinges prerogatiue more liberall then is made or declared by this ſtatute or any other the writters before remembred, for it extendes to any landes holden of the king by knightes ſeruice whether they be holden of the king in capite or not: but forasmuche as the ſaide other writers haue written ſo plainlye in this matter we will ſtand to them and extende the prerogatiue no further, howbeit (as I ſaide) all thoſe writters being ſo longe before the making of this ſtatute doe plainly argue & proue that this ſtatute dothe but confirme and declare that that was the commen law before, vnles we woulde doubt of the time of the making thereof as Littleton doth in 15.E.4. but without doubt it was made in king Edward the ſecondes time, and that plainlye appeareth by the woordes contayned in the third chapter of this prerogatiue, which be theſe. Et illa voluntas tempore Regis. H. patris Regis E. eſtimari conſueuit &c. Which woordes were not written in kinge Edward the firſt daies, for then the woords had bene patris nostri, M 15.E 4.12

noſtri, ſo that (as I thinke) it is not to bee doubted but that it was written in the time abouc limitted and expreſſed. Then go wee to therpoſition of this firſt chapiter of prerogatiue. The woords be, dominus rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſeruicium militare. Theſe woordes go generally to all the kings tenauntes, that is to ſaye, aſwell to his tenantes for terme of lyfe, as to his tenauntes of eſtate of enheritaunce, if it ſo be that he that is in the reuercion haue the ſaide reuercion by diſcent, and be heir vnto the ſaid tenant for terme of life, not forcing whether he haue the reuercion by diſcent from the ſaid tenaunt for terme of life or elſe from any other anceſtour, as take the caſe to be this, a man holdeth no landes of the kinge but onely as tenaunt by the curteſie, and thoſe landes are holden in chiefe by knightes ſeruice & the ſaide tenaunt by the curteſie is ſeaſed in his demeſne as of fee of landes holden of other lordes and dieth, the landes holden of other diſcend vnto him in the reuertion whiche is in dede nerte heire vnto the ſaid tenant by the curteſie, in this caſe the king ſhall not onely haue the wardſhip of ỹ landes that were holden by the curteſie if the ſaide heire be wythin age, but alſo the landes holden of other by vertue of thys prerogatiue. And if the ſaide heire were of full age at the tyme of the deathe of the ſaide tenaunt by the curteſie, the king ſhall haue primer ſeaſon both of the one lande and of the other, as it appeareth in the newe Natura breuiũ. fo. 290. Like lawe is it if a woman be indowed of lands holden in capite and is ſeaſed in fee ſimple of landes holden of other and dieth ſeaſed, and they diſcende vnto the heire whiche is in the reuercion, in this caſe the kinge ſhal haue bothe theſe landes by vertue of this prerogatiue, like as hee ſhall haue in the other caſe before, and that maye ỹou ſee in. 26. li. aſſ. for in bothe theſe caſes they bee the kinges tenauntes, and hold of him by knightes ſeruice in capite, for tenaunt en-

26. li. aſſ. p. 57

dower

lower in the kinges cas holdeth not of the heire but onelye of the kinge, as it shal appeare more fully hereafter. But if he in the reuercion bee not heire of the landes holden of other in the cases aboue remẽbred otherwise it is. But what if he in the reuertion haue the same reuercion by purchace and not by discent whether shall the king then haue his prerogatiue or not: and as to that it shoulde seeme by the newe Natura breuium fo. 281. that the kinge shall haue his prerogatiue in that case also, for there the remainder was to the heire and to his wife and to the heires of theire two bodyes lawfully begotten, and the husbande in the remainder dyd sue liuere, howbeit against ỹ law as me semeth, ideo quere. but if the case in the saide newe Natura breuium had been, that landes holden by knightes seruice in capite had beene geuen to one for terme of his lyfe the remainder ouer in fee which parson in the remainder hath issue and dyeth and tenaunt for terme of lyfe holdeth landes of other Lordes and dyeth whiche discende to the issue that is in the remainder, there it might be saide that the king shoulde haue prerogatiue in the whole like as he had in the cases before remembred of tenaunt by the curtesie and tenant in dower, for like reason will serue in the one case that serueth in the other.

The wordes of the Statut be further, de quibus ipsi tenẽtes fuerunt seisiti in dominico suo vt de feodo die quo obierunt de quocunque tenuerint. These wordes rather apperteigne vntoo the landes holden of other then too the Landes holden of the kinge in Capite, as it shoulde appeare by the cases beefore remembred, and then by these wordes the kinges tenaunt in his life tyme must himselfe bee seased either in possession or reuercion of those landes that hee holdeth of a common person that shall dyscende vnto his heire. For if hee were neuer seased thereof but they discende vnto his heire from some other auncestor, the king shall not haue his prerogatiue in them as appeareth

15.E.4.f.10. reth in 15.E.4. but whether the kinges tenaunt were seased of them in his owne right or in another bodyes right it maketh no difference, as take the case he were seased of them but in right of his wife and hath issue and dyeth, his issue is in the kinges warde for the landes that his father helde in Capite, and afterwarde the wife dyeth the issue bryngeth still in warde, the kynge shall haue Prerogatiue in these landes of the wyfe also, because the husband was seased of them in his demeane as of fee the daye of his deathe, and so wythin the compasse of this statute. And this case may you M.13.H.4. see in.13.H.4. and note, that notwithstandinge this statute speaketh but of landes, yet seruice are to bee taken by the equitie of the same, as it is plainlye proued by the woordes of Diem clausit extremum, which saieth Quantum terre tenet de nobis aut de aliis tam in dominico quam in seruicio. So that if one holde of the kinges tenaunt by certeine seruices, the King shal haue the seruices in warde, for they be in nature and place of the lande that is holden, and so shall it bee supposed. And therefore when the kinge hath those seruices in warde and the tenaunt that holdeth by those seruices dieth his heire within age, if the saide seruices were knightes seruice the Kinge shall haue warde by reason of wardshippe: But yet by that noe prerogatiue in the other M.6.R.2. in Fitz.ti.Gard P.105. landes of the second warde whiche are holden of the other Lordes, as it may appeare in 6.R.2. For the kinges tenant was neuer seased of those other landes ne yet of the seruice that they were holden by, and so without the compasse of this prerogatiue. Like lawe it is where the Kinge hath the temporaltie of a bishop in his custody durynge the tyme the See is vacant, and one that holdeth of those temporaltics by knightes seruice dieth his heir wõn age, ẏ king shal haue ẏ wardship of him, & the reason of it is, because ẏ king hath ẏ wardship of ẏ tẽporaltics, by reaso wherof this wardship cometh, whiche temporaltics the kinge hath in warde by

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the order of the common lawe, in iure corone: For they bee barronies, which can be holden of none other then of the kinge in capite, and then by the common lawe, I take it he were no better then a common person: yet his highnes muſt haue the wardſhippe of them that holde of thoſe temporalties by knightes ſeruice if they falle duringe the time the ſaied temporalties be in his hands with ſuch landes as they holde of thoſe temporalties but not with ſuch lands as theye holde of other, and than muſt the heire thereof when he cōmeth to his ful age ſue a liuere as ſhalmore plainly appeare when we come to the thirde chapiter of this prerogatiue. The woordes of the ſtatute before reſited are, in dominico ſuo: this woorde demeane is not here taken to bee the verie poſſeſſion or takyng of the profits, for if the kinges tenaūt dye ſeaſed but of a reuercion or of a remaynder in landes holden of a common perſon and duringe the minoritye of his ſonne the particuler tenaunte dyethe, the kynge (this notwithſtanding) ſhall haue this lande in warde as he hath the reſt as it may appeare. 22.H.6.15.E.4.f.46.E3. So it is if the kinges tenaunt dye ſeaſed of an aduowſon appendaunt to landes holden of a common perſon. The woordes be further, die quo obierunt, and therefore if the kinges tenaunt dye ſeaſed, of Landes holden of a commen perſone and a ſtraunger abbatethe, yet the heire ſhalbee in warde, and the kyng maye entre and ſo is it if the heire recouer by aſſiſe of mordaunceſtre as it appeareth in the newe Natura breuium fol.289.&.T.12.R.2. But take the caſe to bee that the kinges tenaunte dye not ſeaſed but is diſſeiſed and dyethe, whether in this caſe the kynge maye haue prerogatyue or not, and it ſemethe that hee may, for in all ſuche caſes where the heire hath a right of entre, the kynge may entre in name of the heire and holde it afterwarde in warde: but yf the heire haue but a title of entre or ryghte of accion it

M.22.H.6.f. 20, M.15.E.4.f. 10. P.46.E.3.fo 10.

seemethe to be otherwise, howbeit looke for those matters in the sayde booke of 15.E.4.f.12.H.7.f.18. Edwardi tertii lib.ass.H. 18. Where it is adiudged that of landes holden of the kynge in chiefe, the kynge as in ryghte of hys warde myghte sease by a Scire facias vppon a tytle of entre. And note also that there is somewhat more to bee vnderstanden heare thenne is wrytten or expressed, that is to saye, that the saide Landes muste discende too the kynges warde, for notwythestandynge the kynges tenaunt weare seased in hys demeane as of fee daye of hys deathe in landes holden of a commen persone, yet if the same after hys deathe doe not discende to the kynges warde, but to an other heire, the kynge shall not haue prerogatiue in them as it appearethe in.12.Ed.4. The woordes of the statut bee also De quocunque tenuerunt. But case the kinges tenaunte is seased of certayne thynges whyche neyther are holden of the kynge nor yet of anye other, whether shall the kyng haue them in warde or not, as Perket, warren, Rente Secke, or aduowson en grosse: and as it should appeare in.46.E.3.f.21.H.6. the kynge cannot haue them in warde and yet in 15. Ed.4. soome holde oppinion to the contrarye, therefore inquere and learne what the lawe wil in these cases. The woordes of the statute bee, Per huius modi seruicium, that is to saye, by lyke seruice. Bye these woordes the landes that are holden of other muste bee holden also by knyghtes seruice or els the statute extendes not to them, and yet the lawe is taken to the contrarye, for yf the lands holden of other bee holden but in socage or free burgage the kynge shal haue prerogatiue in them as it appearethe in.24.E.3. for this statute is but a confirmacion of the common lawe, and therefore shallbee taken by equities and namelye when the lawe was so taken in.9.H.3 whiche was longe time beefore the makyng of this statut.

M.12.E.4.f.18.

A.3.H.7.f.4 21.H.6.f.12. 46.E.3.f.10. 15.E.4.f.10.

P.24.E.3.f.13.

T.9.H.3.ti. Prerogatiue in fits.f.25.

T.12.H.7.fo 17.

Howbe-

Howbeit Bracton and Britton dothe extende this prerogatiue no further then to landes holden of other by knightes seruice, therefore enquire for the cause and reason thereof. The woordes bee further, Exceptis feodis archiepi.cantuar &c. This exception extendes not to the bodie, wherefore the kynge shall holde that in warde againste al men, but it extendes to suche landes as are holden of these persones exempted by this statut. Put case then that anie of these persones pourchace a seignorie since the tyme of the makynge of this statute, shall the kynge haue hys prerogatiue in the landes holden of that seignorie or not? And it is clere he shal notwithstandynge the aforesayde woordes of exception: for theye doe not extende but to suche fees as weare theyrs at the time of the makynge of this statut. Then further, for asmuche as there bee diuers statutes concernynge wardeshyppe made aswell beefore as since the time of kynge Edwarde the seconde, let vs see whether this prerogatiue wyl extende to those statutes or not, and it seemethe it dothe, for asmuche as this prerogatiue hathe beene euer from the beginninge as I haue sayde before: And therefore if the kynges tenaunte beeinge seased of landes holden of a common parson makethe a feffement therof by collusion contrarie to the statute of Marlebridge to defraudethe lord of the wardeshyppe and diethe, the king hauing his heire in warde & this matter founde by office shall lease vpon a Scire facias if the collusion be auerrable, or wout a Scire facias, if the collusiõ be apparaunt & hold the same in warde by force of this prerogatiue, & that appeareth in. 9. H. 4. So likewise wher the statute made in 4. H. 7. prouidethe that the heire cesty que vse shallbee in warde. Put case that the kynges tenaunte in capite before the statute in Anno. 27. H. 8. had made a feffement of lands which he holdethe of a common persone to the vse of hymselfe & his heires and dieth before that statute,

Bracton li. primo de custod. et releuiis. Britton. f.

T. 9. H. 4. f. 9

in this case the kinge shoulde haue hadde his prerogatiue in the Landes so beynge put in feoffament to an vse euen as if his tenaunt had died seased thereof, as it appearethe 12. H. 7. fo 17. Than last of all let vs learne howe the lordes whose fees the kynge hathe in warde by his prerogatiue shal be demeaned and ordered for the rentes to be dewe for their seignories duringe the wardshippe whether they shall leese them as they do the landes. And it appeareth in the booke of assises in 29. E. 3. that they had them by petition at the kynges hands, & therwith agreeth thoppinion of Hill' in the. 24. yere of kyng E. 3. Learne the reason of these bokes, for it should seme to me the lawe to be otherwise, because that al meane seignories are suspended duringe the time the kyng hathe the tenaunce in warde, if it bee not per case for the surplusage of a rent seruice whiche the meane maye sue for to the kynge by waye of petition: and to saye that the heire shalbe charged at his full age withe the sayde rentes it weare noe reason, for then bothe his lande shoulde bee in warde, and yet he charged to pay rent for the same: wherefore it semeth that these bokes are against the law. And with me agreeth Bracton in his first boke in the chapiter de custodia where he saieth, Et cum tali ratione sint aliorum feoda in manu domini regis pred' ratione alij capitales domini feod' illorum nihil poterint exigere de terris et tenitis illis nec in seruic' nomi nat' nec in auxiliis ad filiam maritandam vel filium primogenit' militem faciendū vel in sectis quādiu terre fuerunt in manu domini regis, sed precipiet' vic' qd' hmodi distringere non permittat. Howbeit Bracton in his said booke in the chapiter, De releuijs saieth, that the heire at his full age shall pay his relefe to euerie of his lordes notwithstanding he hathe ben in warde, quod nota: for in al other cases he neuer paiethe relefe that is to saye where he hathe bene in ward, and bee makethe no other reason for it butte this, s. quod hoc

29. lib. ass, in fits, ti. Petic' p. 5. P. 24. E. 3 f. 8. and the new natura breuium fo. 179.

est

eſt ſpeciale in rege propter ſuum priuilegium: and ſo is the booke in the.24. yeare of kynge Edwarde the thyrde and the.39. yeare of the ſame kynge, howbeit Brittons oppinion is that the heire ſhall paye noe relefe to the other lordes after hee hathe beene in the kynges warde, and commethe to his full age, and I cannot fynde that the heire in anye ſuche caſe ſhoulde or doothe paye anye relefe to the kynge that is to ſaye where hee hathe beene in warde: therefore learn what experience teacheth vs in theſe caſes.

M.39.E.3.in Fits ti. Relief P.7. Britton f. 163.

The ſeconde chapiter.

ITem Rex habebit maritagium hered' infra etatē & in cuſtodia ſua exiſtēn ſiue terre hered' eorundem ſint ab antiquo de corona ſiue de eſchaetis quę ſunt in manu domini Regis ſiue habuerit maritagium ratione cuſtod' terrarum dñorum eorundem hered' nullo habito reſpectu ad prior' feoffamenti licet de alijs tenuerunt.

All that is contayned in this Chapiter was the kynges prerogatiue by the order of the common lawe, as it maye appeare in the bokes of Bracton and Britton in the places before noted, and in a boke in the 24. yeare of kyng Edward the thyrde where it is ſayde that no lorde can be more auncienter than the kynge, for all was in hym and came from hym at the begynninge. And therefore his highneſſe muſte haue prerogatiue in the bodye of whoſoeuer the infaunte holdeth beſides, bee it that the landes are holden of the kynges highnes as of the auncientnes of his Crowne or of hys newe eſcheates, or come vnto hym as warde by reaſon of wardſhippe, or that his highneſſe doe pourchace the ſeignorie of hym that is lorde by poſteriorite, or pourchaſeth a manor holden of one of his honors, whiche are of his newe eſchetes, of whiche maner thaunceſtor of thinfaunt helde by poſteriorite in all theſe caſes the kynge ſhallbee preferred

Bracton li.1. ti. de herede ſockman in cuius cuſtodia eſſe debeat. Britto f. 163 M.24.E.3.f. 24. H.12.H.4.in fits.ti.Gard. P.81.

to the wardeshippe of the bodye and mariage beefore anye other lorde of whom the auncestor also holde them daye of his death by priority of feffement, that is to saye, more auncient feoffement: howebe it in these cases hys highenesse shall not haue wardeshippe in the landes holden of thother lordes, beecause his tenaunte holde not of hym in theese, but onelye shall haue preferrement in the bodye and mariage beefore all other. Then since the common lawe and statute dothe geue the kinge this prerogatiue, let vs see whether his highnesse maye by grauntinge away his seignorie to an other, graunt also with the same his prerogatiue to the grauntee, that is to saye, wheather his grauntee shall haue the same prerogatiue in the bodye of the chylde as his highnes mighte haue hadde, in case the seignorie had stylle continued in hym. And it appearethe in the. 12. E. 3. f. 14. H. 4. that if the kynge graunt the seignorye to an other in fee simple that the grauntee shall haue noe prerogatiue, beecause there remaynethe nothynge in the kynge of that seignorie vngraunted. But if the graunt weare made to a common persone for noe longer tyme then durynge his lyfe, and the reuersion saued to the kinge, then learn what the lawe will in that case, for wee haue in. 5. Edwarde the third that wheare the graunt was made to the Queene for terme of her lyfe the reuersion in the kinge that her grace hadde prerogatyue euen as the kynge hymselfe shoulde haue hadde, and for none other reason there made but onelye beecause shee holde in ryghte of the kynge. But a man may adde further to that reason and saye that her grace a common persone bee not lyke, for thoughe shee bee a persone exempte from the kynge and maye sue and bee sued in her owne name, yet that that shee hathe is the kynges, and looke what shee losethe so muche departethe from the king,

M. 12. E. 3. in Fits. ti. Preroga. p. 25. et M, 14. H4 in Fits. ti. Garde p. 86.

H. 5. E. 3. in. Fits, ti. prerogatiue. P. 26.

and

and therefore all her tenauntes of parcell of her eſtate maye haue ayde immediatlye of the kynge wytheoute makynge her partye or p̄ſuyte therunto, and ſo ſhee holdethe merelye in the kynges ryght: but a common perſone doothe not ſo. For the kynge hathe nothynge too doe wythe the thynge that her holdethe duryng the lyfe of the leſſee, howebeeit yf the graunt bee made to the Quene for terme of her lyfe the remaynder ouer in ferme yt ſeemethe that her grace gettethe no p̄rogatyue, and ſo yt is ſayde in. 24. Edwarde the thirde. Lyke lawe is it if the kynge graunt an honor to the Lorde p̄rince and hys heires kynges of Englande, it ſeemethe by the better oppinion in 21. Ed. 3. that the Lorde p̄rince ſhall haue there wythe the kynges p̄rerogatiue, becauſe it is not ſeuered from the crowne after the fourme as it is geeuen, for none ſhallbee inherytoure thereof but kynges of this realme. And note well that notwythſtandynge the lawe weare ſo that none in thys caſe but the Queene or p̄rynce myghte haue the kinges p̄rerogatiue, yet if the kyng hauinge the ſeignorye in hys handes after that the warde dothe falle, graunt the ſame warde ouer, the grauntee ſhall haue and enioye the p̄referrement of the maryage agaynſte the other Lordes euen as the kynge ſhoulde hymſelfe, becauſe that notwythſtandynge anye ſuche graunt, yet the kynge is ſayde ſtyll gardeyne and the infaunt duyuen to ſuc for hys ſuerye at the kynges handes whenne hee commethe to hys full age, and not at the handes of the grauntee, whyche in this caſe is but onelye as a commyttee. And ſo is the booke in. 13. H. 4. Lyke lawe is it in the caſe aboue remembred whearе the Queene hathe p̄rerogatiue and the warde fallethe and ſhee grauntethe her wardeſhyppe ouer, her grauntee ſhall haue p̄referrement in the mariage before all other lordes. And ſ̄ alſo appeareth in the ſayd. 5. E. 3

M.24.E.3.f. 34.

M.21.E.3.f. 44.

A.13.H.4.in Fits.ti.prerogatiue.P.24

howebeit that caſe was enforced by that ỹ the kynge confirmed the ſtate of the graūtee, lyke lawe is it yf the kyng haue a warde of righte of his coſone, and graunteth it ouer with ſpecial wordes that he may, ỹ the ſayd graūtee ſhal alſo haue warde by reaſon of wardeſhippe yf it fall during the mynoritie of the firſte warde, in this caſe if there fall a warde whyche holdethe by poſteriorite of the heyre that is in warde, yet that notwythſtandynge the ſaid graūtee ſhall haue the preferment in the warde of the body and mariage, eeuen as the kynge hymſelfe ſhoulde haue hadde yf hee had made noe ſuche graunt, beecauſe it is merely in the kynges righte whyche remaynethe ſtyll lorde, and the graūtee none other but as it weare hys comyttee: and thys appearethe alſo in the.12. yeare of kynge Henry the fowerthe.

H.5.E.3. in Fits. ti. Preroga. p.20.

H.12.H.4. in Fits. ti. Gard P.81.

The thyrde chapiter.

ITem Rex habebit ſeiſinam poſt mortem eorum qui de eo tenent in capite de omnibus terris et tenementis de quibus ipſi fuerunt ſeiſiti in dominico ſuo vt de feodo cuiuſcunque etatis heredes eorum fuerint capiend' exitus eorundem terrarum & tenementorum donec facta fuerit inquiſitio prout moris eſt et ceperit homagium huiuſmodi hered'.

In the.52. yeare of kynge Henry the thirde longe time beefore the makynge hereof was there an other ſtatute made at Marlebridge concerning this matter: In the.16. chapiter whereof it is thus prouyded. De hereditate autem que de dño rege tenetur in capite ſic obſeruād' eſt, vt dominus Rex primam habeat inde ſeiſinam ſicut prius inde habere conſueuit, nec heres nec alius in hereditatem illam ſe intrudat, priuſquam illam de manibus domini regis recipiet prout huiuſmodi hereditas de manibus ipſius et anteceſſorum ſuorum

recipi

recipi conſueuerit, et hoc intelligatur de terris feodis que ratione ſeruicij militaris ſocagij vel ſeriantię ſine iure patronatus in manibus domini regis eſſe conſueuerunt. Both theſe ſtatutes declare themſelfes to be of none other force then as a confirmation of that, that was the kynges prerogatiue by the order of the comon lawe, as it may appeare by theſe wordes, prout moris eſt, ſicut prius habere conſueuit, recipi conſueuerit, eſſe conſueuerunt. And therewyth agreeth alſo Britton. fo. 167 The wordes of the ſtatute bee, Rex habebit primam ſeiſinam, what prima ſeiſina is, it is declared by the wordes that follow. ꝫ. capiendo omnes exitus &c. by whiche wordes it may appeare ỳ kynge ſhal not onelye ſeiſe, but alſo receaue the hole profites tyll iuerye bee ſued, which ſuit moſte commonlye hathe bene and is within the yeare and daye nexte after the deathe of his tenaunt, and therefore the kynge vſethe to take no more then the firſte fruites, that is to ſaye one yeares profites if there bee not apparaunt defaulte in the heire that hee will not ſue hys iuerie, in whiche caſe then the kynges highneſſe ſhallbee aunſwered of all the profytes taken tyll iuerye be ſued or at the leaſt tended and after purſued withe effecte, yea and if it bee a generall iuerie and not ryghtefullye purſued accordinge to the order of the lawe, the kynge ſhall reſeiſe and bee aunſwered of all the meane profites from tyme of ſuyng of the ſayd iuerye, for when the iuerie is miſſued it is as it had beene neuer ſued. Howebeit thys reſeiſure ſhall not bee wythe-oute a Scire facias, as I ſhall thereof ſpeake more at large hereafter. But yf ỳ heyre or he ỳ ſhould ſue iuerie doe make a rightfull ſuite for the ſame according to thorder of the lawe, and almuche as in hym lyethe to do to haue iuerye, howebeeit the kynge will not but willbee aduiſed ere hee make hym iuerie and ſo protracte the time, in this caſe his highencſſe of ryghte maye not haue the profites from the

time

lyme the partye was thus delayed, but ought to reſtore the
H.1.H.7.in Fits. ti. Liuery P.18. vnto the partye vppon his lyuerye, as maye appeare in the firſte yeare of Henrye the ſeuenthe. And thereuppon it is to be noted that there be two kynde of lyueries, the one generall, the other ſpeciall. The generall is the liuerye that this ſtatut ſpeketh of, & eſpecial may be more properly treated of when wee come to the 12. chapiter of this prerogatiue. And this generall lyuerie is ſometime made cum exitibus, and ſometimes ſine exitibus, but for the moſt parte ſine exitibus: for where it is made cum exitibus, from the time of the ſeiſure, there it is properlye noe liuerye, for it appearethe the kynge neuer ſeiſed rightfully or by anye title. As for example, if the kynge will ſeiſe the lande that is founde in thoffice to be holden of Tharchebyſhoppe of Canterburye or Byſhoppe of Durham or anye ſuche perſones as are
H.16.E.3.in Fits. ti. Liuere. P.29 exempted in the firſt chapiter of this prerogatiue, in this caſe they ſhal haue an Ouſter le main vna cum exitibus, as it appearethe in 16.E.3. The ſame lawe is it yf of landes holden in capite there be a leaſe made for terme of lyfe, the remainder ouer to ſtraunger, tenaunt for terme of lyfe dyeth and
14.H.4.f.34 18.E.3.f.21. 24.E.3.f.27. this matter founde by office, nowe if the kynge ſeiſe, hee in the remainder ſhall haue an Ouſter le main vna cum exitibus as it appearethe in 14.H.4.18 E.3.f.24. Edwarde the thirde. Like law it is where tf. hold ioyntly of the king & the one dyethe and this matter founde by office, and yet that notwithſtandynge the kynge ſeiſes, hee that ſurviues ſhall
44.li.aſſ. in Fits. ti. Liuere. P.11. T.45.E.3.f.18. haue an Ouſter le mayn vna cum exitibus, as it appearethe in the boke of Aſſiſes 44.E.3. and in the newe Natura breuium fo.238.f.290. For in all theſe caſes where the Ouſter le maine is vna cum exitibus the king ought not to haue ſeiſeſed, and ſo ſayethe Thorp 45.E.3. The wordes of the ſtatute be further, Poſt mortem eorum qui de eo tenent Vpõ this: it is to bee ſene at what time after the kynges tenants

death

deathe this lyuerie shall be sued. If the possession of the free holde immediatlye after the deathe of the kynges tenaunts discende vnto his heire it is also sued fourthwithe, and yf but onelye a reuertion discende, then it is not to be sued tyl after the death of the particular tenaunt, as it may appeare in the newe Natura breuium f. 291. where the heire sued not lyuerie tyll after the deathe of the tenaunt by the curtesye, tenaunt in dower, and tenaunt for terme of lyfe. But learne what the lawe shoulde haue beene if the kynges tenant hadde dyed seised of a reuersion whereupon rent had beene reserued, hys heire of full age, whether hee should haue the sued liuerie fourthwith, or els to haue taried tyll the deathe of the particuler tenaunt for in the seuenthe yeare of kyng Henrye the firte Iune thinks he should tary or els it might followe the kynge should haue double lyuerie that is to say M.7.H.6.f.3 one for the rent an other for the lande, but Paston is in contrarye opinion, and resembles it to a reuersion dependyng vpon an estate tayle with a rent reserued, howbeit at this daye there is election geuen vnto the heire, that is to say eyther to sue his liuerie immediatly after the deathe of his auncester in the lyfe of these particuler tenaunts, or els to tarye vntill they die, and if he sue his lyuerie in theire lyfe he paiethe for primer seisin but the moytie of one yeares profyte, & yf after theire deathe then he payethe the hole yeares profit, howbeit if there be a rent reserued & he pursueth his liuerye in the lyfe of the particular tenaunt, it seemes besides ỹ halfe yeres profit of ỹ value of the land he shal also paye ỹ hole yeares profit of the rent reserued, therfore learn what common experience teacheth vs in that case. The woordes of the statut be, Qui de eo tenent in capite. By these woords he must holde of the kinge in chiefe, for yf he holde not of hym in chiefe the kynge can haue noe primer seisin. And yet you shal see in the newe Natura breuium folio. 296. that of lands in the citie of Lõdon holden of the king in burgage

the

the king had primer seisin, & the heire thereof sued his liuery but that president semes to bee against the lawe, for Mark-
T.7.E.4.f.9 ham saiethe in 7.E.4.ỹ ps. Pechels case it was founde that ones father died seised of certain lande that hee helde of the kyng in Burgage, and thereupon therecto' did seise, whiche seisor by thaduise of all the Iustices was discharged by a Supersedeas awarded to therecto', for the wordes of bothe the forsayde statutes be verye plaine therein, that is to saye that hee must holde of the kynge in capite, but whether he holde of the kyng by knights seruice or by Socage in capite it maketh noe matter so that he holde in capite, for the kinge in bothe cases shall haue primer seisin althoughe not wyth so large a prerogatiue in thone case as in ỹ other. For in the firste case where the tenure is knyghtes seruyce in capite the kynge shall haue the same prerogatiue when the heire is of full age at the deathe of his aūcestor as he should haue hadde yf hee hadde beene wythin age, that is to saye primer seisin aswell in the landes holden of others as of hym selfe, bee it that the landes holden of other bee holden by knyghtes seruice or in Socage. But otherwyse yt ps where the tenure is but a tenure by Socage in capite, for there the kynge shall haue noe primer seisin in landes holden of other, namelye if theye be holden of other by knyghtes seruice, as it appearethe plainlye by the statute of Magna charta capit.27. and in the newe Natura breuium fo.288. nor yet anye primer seisin of landes holden of hymselfe in Socage in capite: If the heyre at the deathe of his aunces-
35.H.6.f.47. ter bee not of the age of.14. yeares, as appearethe, 35 H.6.
T.45.E.3.fo 45. Edwarde the third and allso in the newe Natura bre-
16. uium fol.288. & fol.292. But in euerye of these cases theye to whom the bodye belongeth shall haue an Ouster le main of the landes vna cum exitibus that ps to saye the lordes of whom the land is so holde by knights seruice in thone case,

and

and the Prochein amy in the other caſe. But wher the lan-
des be holden of the kyng in Socage in capite, & the heire
of the age of 14. yeares at the deathe of his auncester, there
the kyng shal haue primier seisin and the heir dyuen to sue
lyuerie, for there is no persone that can make anye title to
the heire or his landes but onelye the kynge, and therefore
the king muſt haue his primier seisin, & the heire driuē to sue
his liuerie by expresse woords of the foresaid statut of Mar-
lebridge, & so it seemeth also in that caſe ỹ his highnes shall
haue primier seisin in landes holden of other, so they be hol-
den but in Socage, for the reasō aboue remembred, Tamen
quere. The woordes of the statute bee farther, de omnibus
terris et tenementis de quibus ipsi seisiti fuerunt in domi-
nico suo vt de feodo. These woordes may bee conferred and
coupled with the firſte chapiter of this statute of prerogati-
ue whiche hath the verye selfe same woordes. And therefore
looke in what caſes noted vppon the firſte chapiter the king
hath his prerogatiue by reason of wardship, In al the same
caſes shall his highnes haue prerogatiue by reason of prī-
mer seisin if the heire weare of full age at the deathe of his
auncester. Wherfore to reherce thē here particularly it we-
re but superfluous, except it bee in the caſe onely of colluſi-
on geuen by the statute of Marlebridge where the heyre is
within age, becauſe it speaketh nothinge of the heire that
is of full age. And therefore in that caſe it seemes the kyng
cannot haue lyke benefyte of primier seisin as hee hathe of
wardeshippe, when the heire is wythein age. Howebeeit
there is a booke in that pointe lefte at large whiche is 17.
E.3. & 7. E.3. & there the caſe was. The tenaunte enfef- M.17.E.3. f.
fed his sonne and heire & dyeth before the feffee gaue notice 63.
thereof to the lorde. Ideo quere. The woordes of the statut M.7.E.3.in
be farther, Cuiuscunque etatis heredes ipsorum fuerint. To Fits.ti.Re-
these woordes also shall the firſte chapiter of this estatute lief.p.11.

haue

haue relacion, for they plainly declare that if the heire were within age at the deathe of his auncestor, the kyng shal haue primer seisin and the heire giuen to sue his lyuerie, notwithstandinge also the kynge haue had the wardshippe of hym. For the woordes be generally spoken and maye be extended aswell where hee was within age at the deathe of his auncestor, as where hee was of full age. And so hathe it beene euer vsed, sauinge that where hee hath been in ward hee payethe but one halfe yeares profite for primer seisin, and in the other case hee payethe the hole. The woordes of the statute bee farther, capiendo omnes exitus eorundem terrarum & tenementorum, donec facta fuerit inquisitio prout moris est et ceperit homagium hered'. By these woordes it maye appeare that the kynge after the deathe of hys tenaunte and beefore anye office founde, mighte seise the landes and take the profites, whiche thinge surelye is true, as plainelye is proued by the writte of Diem clausit extremum whiche hath these woords Cape in manum nostram omnia terras & tenementa &c. donec aliud inde perceperimus & per sacrum proborum hominum diligenter inquiras &c. So the seiser goethe beefore the inquisition, howebeit since the statut made at Lincolne Anno. 29. E. 1. called statutū de Escaetoribus it is not vsed to seise tyll office bee founde, and then the kyng to bee aunswered of all the profites since hys tenaunts decease, whiche commethe all to one effecte. And that statute dothe not restrayne the seiser, but that therches for maye seise at this daye without office. By the aforesaid statute of Marlebridge cap. 16. it is expounded and playnelye set foorthe of what lands and fees the kynge shall haue primer seisin, for these bee the woordes. Et hoc intelligatur de terris & feodis que ratione seruicij militaris, socagij, vel seriacię sine iure patronatus in manibus domini regis esse cōsueuerunt. By these woordes it maye appeare that he that is warde

is warde beecause of wardeshyppe shall sue lyuerye, or where one holdethe of the kynges warde by knyghtes seruice or in Socage and dyethe hys heire of full age, the king shall haue primer seisin of the landes, that are so holden of hys warde, and the sayde seconde heire dyuen to doe hys homage or fealtye as the case shall require to the kynge, and allso to paye hys relefe vnto hym and to sue lyuerye of the sayde landes as it appearethe hee dyd in the newe Natura breuium fol.294. F. 295. For it is within the compas of these woordes, que ratione seruitij militaris. So ys it yf the kynge haue a Bysshoppes temporalties in his hands duryng the time that See is vacant, and one that holdeth of that temporalties by knyghtes seruice or in Socage dyethe hys heire within age, in this case, after that the kynge hathe hadde the wardeshippe, the heire at his full age shal paye primer seisin and sue hys liuerye. And so shall he doe yf hee bee of full age at the tyme of the death of hys auncestor, for the woordes of the statute bee, De feodis que iure patronatus in manibus domini regis esse consueuer', and therwithe agreethe the newe Natura breuium folio.286. Butte learne yf the kings tenant in chiefe dye, hys heire of full age and one that holdethe of the heire berfore hee hathe sued his liuerie dyethe, his heire allso beeynge of full age, whether in thys case the kynge shall haue primer seisin of the landes of the seconde heire or noo, as hee shoulde haue hadde yf the heire of his tenaunte hadde beene within age, and in the kynges warde at the time when this seconde heire dyd falle, and it seemethe to mee hee shall, for the reason made afore. Thanne laste of all whether this prerogatiue extende to anye statute made since the tyme of kynge Ed. 2. and it seemes it dothe, and that for the reason noted in ỳ firſt chapiter, as the feffees of Ceſtuy que vſe,

before

before the ſtatut made in ỹ. 27. yere of kyng H. 8. vſed to ſue an Ouſter le mayn ſine exitibus, whiche was in nature of a lyuere for ỹ heire of cellui que vſe which had bene in ward. Item for aſmuche as there be exceptions in the firſte chapiter and none in this, whether theye alſo bee cõpriſed within this chapiter or not: and me ſeemes theye bee, becauſe theſe .ii. chapiters muſte concurre together and agree in euerye thynge. And yf the heire bee within age at the deathe of his auncеſter, the Archebyſhoppe of Caunterburye ſhall haue an Ouſter le mayn vna cum exitibus, ſo that the heyre ſhall not ſue lyuere of that, & then by the ſame reaſon yf hee be of full age at time of the deathe of his auncеſter, for the lyuere in thone caſe and thother is geuen by this chapiter as me ſemethe, Tamen quere.

The fowerth chapiter.

ITem aſſignabit viduis poſt mortem virorum ſuorum qui de eo tenuerint in capite dotem ſuam quę eas contingit &c. licet heredes fuerint plenę etatis ſi viduę ille voluerint, & viduę illę ante aſſignationem dotis ſuę predictę ſiue heredes plenę etatis fuerint ſiue infra etatem iurabunt qd' ſe non maritabunt ſine licencia regis. Et ſi ſe maritauerint ſine licentia regis tunc rex capiet in manum ſuam nomine diſtrictionis omnes terras et tenementa quę de eo tenentur in dotem donec ſatiſfecerint ad voluntatem ſuam ita qd' ipſa mulier nihil capiet de exit' &c. quia per huiuſmodi diſtrictiones huiuſmodi mulieres ſeu viri eorum finem faciant regi ad voluntatem ſuam, et illa voluntas tempore regis H. patris regis E. eſtimari conſueuit ad valenc. predictę dotis per vnum annũ ad plus niſi vberiorem gratiam habuerint. Mulieres quę de rege tenent in capite aliquã hereditatẽ iurabunt ſimiliter cuiuſcunque fuerint etatis quod ſe non maritabunt

ſine

ſine licentia regis, et ſi fecerint terre et tenementa ipſarum eodem modo capiãtur in manũ domini regis quouſque ſatisfecerint ad voluntatem regis.

This ſtatute lyke wiſe doth but confirme the comõ lawe be cauſe it appereth by ỹ ſtatut of Magna carta ca. 7. which was firſt made in the tyme of kynge Ihon. the third, which is, qd̃ nulla vidua diſtrīgatur ad ſe maritādũ, ita tamẽ, qd̃ ſecuritatẽ faciet qd̃ ſe nõ maritabit ſine aſſẽſu noſtro, ſi de nobis tenuerint. And alſo in the 24. yere of the ſayd kynge henry ỹ third, it is ſayd, that whẽ the kynges tenãt dieth & his wyfe endowed, ſhee cannot marie without the kynges licence, & yf ſhee doe, ſhe & her huſband ſhall make fine. Therpoſiciõ. It ſhould apere by the wordes ỹ the wiefes of al them that hold in Capite can not haue dower at anỹ mans hands but onelie the kinges if his grace will, for in ỹ his grace hath a prerogatiue aboue al comõ pſõs aſwell for ỹ ſhe ſhall the rebie hold of his highnes in chief as for that ſhe ſhall not marie wt̃ out licenſe: for ſo ſhe might be maried vnto the kinges enemie, and there bie ỹ ſtrẽgth of ỹ crowne enfebled. Therfore it is prouided that his highnes may aſſigne the dower whether the heir be of full age or within age, to thentent that ſhe before ỹ receuing therof ſhall take a corporall othe not to marie without the kings licẽſe. The maner of the aſſignement whether the heyre be of full age or within age is berie wel ſette foorth in the new Natura breuiũ fo. 296. in the writ de dote aſſignandâ. Howbeit for ỹ cõe things are there noted which ſeme to repunge wt̃ our booke caſes, I purpoſe to confer the one with thother and ſe how thei can agre. In the ſaid Natura breuiũ it apereth that not withſtanding the king had comitted the land ouer to an other, yet the womã ſued in the Chãcere to the king for her dower and not to ỹ cõmittee, & in our bookes you ſhall ſe many writs brought againſt ỹ comittee, yea & in ſome of them that ſhe recouered her dower and the king not made partie to the ſame, as the

booke

H.4.h.7.fitz ti.Eyde de Roy.P.33.

boke is in 4. H.7. where the writ of Dower was brought againſt ỹ kings cõmittee, who pleded in barre without praying in aid of the king, & the barre was found againſt him, and notwithſtanding that it did apere vnto the Iuſtices that the king might be touched therby, yet would they not ſurceſſe but awarded that the demandant ſhould recouer & toke for their cauſe the ſtatute of Bigamis the third chapter which ſaieth in this maner. De dotibus mulierum vbi aliqui cuſtodes hereditatis maritorum ſuorum cuſtodias habent ex dono vel conceſſione regis, Siue cuſtodes rem petitam teneant Siue heredes dictorum tenementorũ vocentur ad vvarrantũ ſi excipiant quod ſine rege reſpondere non poſſint, nõ ideo Supſedeatur quin in loquela predicta prout iuſtum fuerit procedatur. This Natura breuium and this boke of. 4. H.7. ſeme not to agre. For where takes ſhe anie oth wher ſhe recouers by a writ of dower in the comon place: which othe ſhe muſt nedes haue taken if ſhe had ſued in the chauncerie, or howe maie the committee endowe her, when percaſe he will endowe her of more then ſhe ought to haue or endowe her wher ſhe is not dowable by the law: wherunto one maie aunſwer in this wiſe, that his wrongful endowment ſhall not conclude the king, but ỹ his grace maie reſourme the thing when he wil, and ſins he hath cõmitted all his intereſt ouer Durante minore etate, his grace maie permitte thendowment made by the committee yf it be rightfullie made to ſtand: and ſpecialli becauſe of the ſtatute of Bigamis which alowes it ſo to be. And notwithſtanding ſhe take no othe, yet can ſhe not marie without the kinges licenſe, for this endowmẽt by ỹ comittee is the kings endowment vpon the matter, for ỹ that ſhe holdeth in right of the king which continues ſtill garden notwſtanding any ſuch comiſſiõ or grãt made of the wardſhip. Therfore yt ſhoulde ſeme ỹ after the ward comitted ouer (as is afforſaid) it is at the electiõ of the woman whether ſhe will ſue to the king in the chauncerie or at the comon law againſt the comittee: But if the king do but comit the ward ouer Durante bene placito

placito otherwise it is, for there she must sue onely to the
king, as apereth. 8. E. 2. And note well that this statute of Bigamis before recited will also that if the heir of ỳ husband be vouched to warrantie beinge in the custodie of those Lordes ỳ the Iustices shall not surcesse nomore then when the writ of dower is brought against the comittee. Cõtrarie to this braunche of ỳ said statut are there diuers bokes, as 18. E. 3. & 8. E. 3. & 19. E. 3. wher the said comittee came in, the heir being vouched in their ward & showed how they held of the kinges leale & prayd in aid of the king & had it: wherat I do not a litle meruel because of this statute of Bigamis which was neuer spoke of ne yet remembred in these bokes, in their iudgemẽts as it should seme beinge directlie against this statute. Howbeit ỳ maner of the lease doth not there certenlye apere, ỳ is to saie, whether ỳ wardship were granted Durante bene placito or Durante minore etate, for ỳ would make a differẽce as I haue said before. Also the boke is. 39. E. 3. where in a writ of Dovver brought against ỳ comittee ther was aid grãted of ỳ king, but ỳ semes to be out of ỳ compas of ỳ statute of Bigamis which spekes onelie of thẽ ỳ haue it of ỳ kinges grãt, & so hath not the secõd Comittee, therfore lerne what ỳ law will in these cases. But if ỳ wardship be comitted to ỳ wife wout anie exception or forprise of her dower, she by ỳ is cõcluded to claime ani dower during ỳ said wardship, as it may apere 9. H. 4. in ỳ said new Natura breuium. fo, 298. It is also said ỳ where liuerie is made to ỳ heier before the womã sue for her dower in the chãcerie, & in the said liuerie there is no sauing made for her dower, ỳ thẽ she must pursue her writ of Dovver against the heir: & the reson ỳ there made is, beecause the king hath made liuerie generally wout ani reseruacion of Dower to be assigned by his highnes: whereunto I aunswer, ỳ whẽ liuerie is sued before assignemẽt of dower, there is moste comõlie in ỳ writs of liuerie a sauinge made for her dower if it so be ỳ she were found the kings tenantes wife in thoffice, and she beinge

Fitz Tit. Dower. 169.

18. E. 3. fo. 38
H. 8. E. 3. in Fitz ti. Voucher. P. 154.
H. 19. E. 3. in Fitz Tit. Aid de Roy. 64.

39. E. 3. fo. 10

so founde if the heyr sue a generall liuerye leuying our these wordes Salua dote or retenta dote &c. it is a good cause for ỹ kinge to release the hole, for ỹ liuerie is misused in this case and that I learned of iustice Spilman which noted it so in .. of H.8. but if the be not found wife in the office the heire may sue his liuerie without anie such sauinge and to saie ỹ the kinge by making such a liuerie should waiue the aduantage of his prerogatife in the dower: that semes not to bee trew vnles the said waiuer were by expres wordes, wherfore it semes the heir in that case after liuerie is not bound to yeld vnto her dower, but her onlie remedie is to sue for ỹ same to the king, and that must be tryll vpon an office (as I think) finding that she was his tenantes wife, Ideo quere, and learne whether she may haue dower in any case either in the chancerie or by writ of Dower at the comen lawe against the cõmittee or the heire, vnles she be found wife first by office as is aforesaid, except it be in cases where the king will refuse this prerogatife. And note that like as the kinge hath a prerogatife by this statute to yeld dower to the wife of his tenant, so hath his highnes a prerogatife by the comõ law to withold dower from the wife of his tenant, which no comon person hath. As put case in a writ of Dower the heir be vouched in the kinges warde, and the tenãt sholwes for his lien the feffement with warranty of the husbande which is father to him that is vouched, yet that not withstãding she shall recouer her dower against the tenant and not against the heir, because ỹ els the king should lose ỹ ward ship of the lands wher the womã maie (without her losse) as well recouer her demaund against the tenaunt as she should against the kinge, and yet if the king were a comon person in that case he should lose the ward ship of so much as she demaundethe. And this boke is. 26. E. 3. wher it is said that the kinges comittee of the wardship shall not haue ỹ prerogatife, & therew̃ agrees. 8. E. 3. And note ỹ like as ỹ king hath

26. E. 3. fol. 58. H. 8. E. 3. Fits ti. Voucher P. 154.

prero-

[illegible] againſt the wife that bringeth the writ of Dower ſo ſhall he haue prerogatiue againſt the tenaunt in the writ of Dowver: for notwithſtanding that the tenaunt hath ſeiſe ſaue cauſe haue iudgemẽ, to recouer ouer in Dower againſt the heire which is in the kinges ward, yet he ſhal haue no execucion of that recouerie til the land be ſued out of the kinges handes. Holwbeit 27. E.3. is contrarie to the ſaid booke of 26. E.3. ideo quere. And learne and enquire whether a womã being thus endowed at the hãds of the feffee of her huſband of ſuch lands as he died not ſeiſed of and wherof the king at that time can haue no wardſhip, whether ſhe maye marie or not without the kings licenſe, & it ſemes ſhe can not for anie wordes compriſed within this ſtatute. And it apereth in the boke of Aſſiſes. 26. E. 3. that wher a woman was endowed by gardein in chiualrye and afterwards the garden committed treſon wherbie the ſeignorie was forfet to the kinge, that after this forfeiture ſhe ſhould hold of the kinge and not of the heir which was in the reuerſion, in which caſe then ſhe can not marry without licence as me thinketh. Thẽ further, it is to be ſene to what lands the ſtatute dothe extend vnto and to what not. It extendes to landes holden in capite wherof any woman claymeth dower, as maie apere by the wordes of the ſãe ſtatute and not to anie other lands, for if the king haue in his cuſtodie byſhops temporalties during the tyme the ſea is vacant, and one that holdeth of thoſe temporalties by knightes ſeruice dieth his heir being within age, whereby the kinge hath the wardſhip of his heir and ẽdoweth his wife, in this caſe ſhe ſhall make no othe but maie marie without licẽſe. Like lawe is it wher ſhe is endowed of lands that are holdẽ of him that is the kings highnes ward by reaſon of a tenure in Capite, for in both theſe caſes the land wherof dower is demaunded are not holdẽ of the kinge in cheefe, and this doth apere in the newe Natura breuium fo. 297. and yet in both thoſe tales ſhe is endowed in the chauncerie, but

27. E. 3. fo. 87

26. li. Aſſ. P. 57

what is that to the purpose? for so shall the heire in tayle cau-
ses suche liuerie of those lands, and yet thei be neuer the more
for ỳ holden in chief, but onely vsed for a solempnity [illegible]
tore were in ỳ kings hands once by office, which is matter
of record. The wordes of the statute be further Et si femme
ritaue. int sine licentia regis tunc rex capiet in manū suā no-
mine districtionis ones terras et tenta que de eo tenet in dote
&c. These wordes be knit in a copulative to ỳ former wordes
contained wtin this chapter, that is to saie, wher she hath de
maded dower and is sworne not to marie, but yf she will
neuer demaūd dower of ỳ lands holden in Capite she may
marie wher she will: for the wordes of the statute be quod
assignabit viduis dotem, si vidue illi voluerint, & so thinkes
40. Li. Ass. in Fitz ti. gard 40. r. Iustice Fitzherbert in his Natura breuium fo. 197. How be
it by the boke in 40. libro. Ass. it apereth that the wife ne
uer demaunded dower and yet had alowance of it and did
marie also wout license and yet paied no fine, & therfore the
case was: The kings tenant in taile in chiefe made a feffe-
ment by licence and take estate again to him & to his wife
and died, the wife takes an other husband and dies, after
whose deth the auncient estate taile being found by office,
the license was holden void because the king was discoued
therin, and the second baron driuen to aunswere for ỳ mene
profets of ỳ partes of ỳ lād but not for ỳ third part, because
she was endowable. quod nota. A womā tenant in dower
of no mans assignement, & some there thought she should
forfet her dower because she was partie to ỳ disceit. How-
beit this case semeth not to be properlye wtin ỳ cōpas of this
statute. Also Fitzherbert in the said Natura breuiū thinketh
that wher the king hath vsed to graunt to other ỳ mariage
of his widowes that a compoficion wt the grantee made for
the same (whether it be made by ỳ wife or the husbād) is as
good as if it were made wt the kinge, yet can not ỳ grātee in
such case compell her to marie, for ỳ should be contrarie to
ỳ statute of Magna carta cap. 7. which wil ỳ she shal not bee
constrained to marie by distres, but if she will she maie liue

sole

[illegible] it at this daye by the ſtatute of 32. H.8.cap. 46. [illegible] impoſicion is geuen to the maſter of ꝑ kings wardes & liueries w̄ ill. of ꝑ counſel of ꝑ ſaid court. And likewiſe auc-thoꝛ-ye is geuen to thē wher ꝑ kinges widowes marry [illegible] ſeues licenſe to tax a reſonable fyne by their diſcrecti-ōs acoꝛding to ꝑ ſtatute of prerog. regis which ſtatute plain-lie ſetteth furth what hath bene vſed to be doon in ſuch ca-ſes, ꝑ is to ſaie, the value of her dower by one yere, & therw̄ agrees the new Natura breuiū. fo 197. And foꝛ ꝑ fine ꝑ king ſhall ſeaſe all the lands & tenemēts ſo holden in dower as it aperes by ꝑ letter of ꝑ ſtatute. How beit the Regiſter geueth ꝑ the king may ſeſe aſwell the land of the huſband as of the wife, becauſe ꝑ mariage is a wrong doon to the kinge, but the ſtatute is cōtrarie to ꝑ, & therfoꝛe Fitzherbert in the ſaid Natura breuiū. fo. 197. thinkes it to be no lawe: Foꝛ as wel might the lands ꝑ the woman hath of her inheritāce be thē ſeſed, wherfoꝛe no other land ought to be ſeſid then ꝑ ſhe hol deth in dower, as it aperes in ꝑ ſaid Natura breuium. fo. 298 And lerne whether ꝑ womā obtaining dower at ꝑ hāds of the comittee oꝛ of the heire of lands holden in capite with-out making any othe may marie oꝛ not without licēſe, & as me ſemeth ſhe can not, foꝛ as ſone as ſhe is ēdowed of thoſe lāds ſhe is ꝑ kings tenant & not tenāt to ꝑ heir which is in ꝑ reuerciō: foꝛ if a treſpas be done vpō the land, ſhe ſhall haue a wꝛit out of the chācerie ꝑ ſhe ſuch hath entred vpon the kinges poſſeſſiō & the auſwere to be made by the king reſ-teth onlie vpō her, & ſo is the opinīō of vvood in. 1. H.7. And yet the reuerciō is in ꝑ heier onlie, foꝛ if ſhe do waſt, ꝑ heier ſhall poniſh her foꝛ it & not the kinge. Thē further, let vs ſe of what foꝛce this dower is whē it is made in the chācery, & how ſhe ſhalbe admeſured in ꝑ fāe if it be to grete, foꝛ if it be to litle ther is no remedie foꝛ her but to ſtād to her owne harmes if ſhe in ꝑ chācerie once did accept it, not foꝛcig whe-ther ſhe were thē w̄in age oꝛ of ful age, and it maie apere in. 18 E.3. The dowment in the chauncerie is of this foꝛce, that whether it be by right oꝛ by wꝛong it cannot be defeted by waie of plea without a ſute made in the chauncerie foꝛ the

1. H.7. fol. 3.

18. E. 3. 29.

17.E.3.f.71. deſeting therof as it apereth i.H.17.E.3.C.3. And [illegible] verie ſtrong caſe one doth trauerſe the office which is [illegible] the
[illegible] in chancerie by reaſon the land is holden of him by knyghtes
Fitz. ti. D[illegible] ſeruice and not of the king, and hath an ouſter le main vſ-
vver. P.128. cū exitibus: yet if ſhe were endowed before in the chancerie
vpō ỹ office, her dower remayneth vndefeted not wſtanding
this trauerſe and ouſter le main vntil an other ſute be made
in the chauncerie for the deſeting of the ſame. Howbeit in
this caſe if the dower be ſo much, the lord that tended the tra
uers maie haue a writ of admeſurement at the comon lawe
and ſo cauſe it to be admeſured wout ſuing to the king for
the ſāe. For it is no loſſe to his highnes though ſhe be adme
ſured, ſeing the land is not holden of of him, as it apereth. 7
7.R.2. i Fitz ti. Admeſur. P.4. R.2. and there it is agreed that the heir ſhall haue a writ of
admeſurement of aſſinement of dovver made by his aun-
ceſtor, quere tamen. But the abatour ſhal not haue a writ of
admeſurement nor garden en fait of aſſinement made bye
garden endroit, nor if the heir were of full age at the deathe
of his auncetor and died his heir within age, the garden of
his heire ſhall not haue a writ of admeſurement. But take
the caſe to be that a woman is endowed in the chancerie the
reſt of the land there remaininge ſtill in the kinges handes,
yf it be ſurmiſed by the heir or any other for the king that ỹ
land aſſined to the wife is not extended to the verie value,
but that it is more in value then it is extended for, now vpō
this ſurmiſe there ſhalbe a newe extente made, which be-
inge returned in to the chancery a Scire facias ſhalbe awar-
ded againſt the woman, and if ſhe be warned and come not,
or apere and ſaie nothing ſhe ſhalbe newlie endowed, as it
is ſaid in Natura breuium fo.298. Then let vs ſee farther
at what time the woman may aſke her dower in the chaun-
cerie, and when ſhe is endowed and loſes her dower vpon
a recouerie had againſt her by an eigne title how ſhe ſhal-
be recompenced, if the husband haue land in diuerſe coun-

ties

whether after his death there be alarded seueral writs vz̄ quod clausit extremum in to cuerie of those counties they shal not be endowed vntil such tyme as all ỹ said writs be returned again in to the chancerie, as it maie apere in. 16. E. 3. And note that when she is endowed in the chancerie and afterwardes loseth by a recouerie vpon an eigne title, then she hath none other remedie but to cause the record of the same recouerie to be remoued in to the chauncerie, and vpō the first record wherby yt apered she had dower and this other record of ỹ recouerie, she shal haue a Scire facias rectig both the recordes against the tenāt of the ii. partes to resese the said ii. partes in to the kinges handes and to be newlie endowed of the same, but not to recouer anye damages, not withstanding damages were recouered against her, & this apereth 43. in the boke of assises. Now to the last braunche of this statute, which is, that wemen that hold of the kinge in cheefe any inheritāce of what age so euer thei be shal likewise swere not to marie &c. By the order of the comon lawe before the making of this statute all women that were vn in age & in ward should whē they came of ful age be maried by their lords euerie one of them with their porcions, and if they were of full age at ỹ deth of their ancestours, yet should they neuertheles be in the lords keping vntill thei were maried by the aduise & dispositiō of their lordes. For as Glāuille in his. 7. boke ỹ he wrote in the time of kinge. H. 2. sayethe Nulla mulier heres terrę sine dominorum dispositione vel assensu maritare potest de iure vel consuetudine regni, and there fore saieth he yt a man haue sone or moe doughters which be his heires aparante & marieth any of them vnto the assent of his lord, that he therbye forfets his inheritance by the lawe and custome of the reime so that he shall neuer recouer yt again but onlie through his lordes mercie, and ỹ for this cause: For when the husband of such a woman shal do his homage for ỹ tenemēts so holden by knightes seruice

Fitz ti. Liuerc. P. 29

43. lib. ass. in Fitz ti. Dower. P. 79.

it

it is requisite to haue the lordes will & assēt lest he be co[m]-
led to receue homage of his mortall enemie or some other
vnable personage, neuertheles yf ỳ tenant sue to his lorde
for license to marie his daughter, the lord is bound to graūt
or els to shewe cause whie he should not, and if he will not,
the woman may marie wher she liste without his assent.
And the said Glanuill further saieth, that a tenant in dower
can not in likewise marie without the assent of him that is
her warrant, that is to saie the heier: And if she doe she shal
lose her dower, and yet there ỳ halbād shal doe no homage,
but what then? he shall do fealtie and for that cause also she
shal haue license. And further saieth if she holde of diuerse
lordes it is sufficiēt for her to haue the assēt of ỳ cheefe lorde.
Also he saieth that wemen being in ward Si de corporibus
suis foris fecerint: which wordes as I vnderstand them bee
if thei comit fornication and that be proued, then they that
offend shalbe disherited, so that her porcion then goes to
the other sisters ỳ haue not in the like offended: And if they
all offend, then the lord shall haue the inheritance by wayes
of eschete. Howbeit saieth he wher they be ons maried by ỳ
lordes assent and after decēe widowes thei shalbe no more
in ward, but yet if thei marie again they must haue his assēt
for ỳ reson before made. But then after thei haue bene once
maried, thei shall not forfet their inheritance for their incō
tinencie, so that it aperes plainly here by Glanuill that this
hole statute of prerog. should be but a confirmation of the
comō law. And that the law was so as Glanuill toke yt, it
may partly apere by the said statute of Magna carta cap. 7.
For the wordes are not onlie quod vidua securitatem faciet
quod se non maritabit sine assensu nostro si de nobis tenu-
erit, but are also vel sine assensu domini sui si de alio tenuerit
And Bracton agrees also with Glanuille. Howbeit he saieth

Bracton li-
bro 1, de cus
todia sock-
manorum

where

a woman in the life of her auncestors maries with out assēt of the lord or wher the widow maries without the assent of her warraut, that the inheritance or the dower shall not now be forfeted, although in olde time it was. And farther saieth that the heier in socage being a woman shalbe maried by the lord like as she should be if she weare heier of lands holden by knights seruise. And farther saieth that the heier male shalbe maried by the lord more thē once, that is to saie, as oftē as he shall come vnmaried in the time that he is vnder the age of xxi. yeres. But now by the statut of w. 2. cap. 22. the lords are abreged of their power in these mariages of the heires females, for yf thei now be within the age of xiiii. yeres at the death of their auncestor and the lord doth not marie them before thei come to xvi. yeres, then shall thei recouer their heritage without ani thinge geuen either for the ward or for ỳ mariage. And if thei maliciously or thorough euel counsell refuse to marie where their lords doe apoint them without disparagement, then shall their lord hold their land vntill thei come to the age of xxi. yeres & longer vntill they haue take thē the value of the mariage. But of this statute (if it be wel cōsidered) a man may gather that the comon laiwe was no lesse then is here recited. And this statute was made about the. 3. yere of king. E. the 1. a litle before that Britton began to writ his boke: for Britton f. 169. saies ỳ the mariages should be offred to the heires females before they accōplishe the age of xiiii. yeares, and yf not the lorde shall lose his right in the saide mariages. I suppose that the printer mistoke the nomber of the yeres and should haue printed sixteene wher it is set forteene, and therfore it is good to see other copies for this matter. And Britton. also sayeth that if he or she haue beene once marryed by the lorde or in the lyefe of theyre father or

once

once agreed wō their lord for their mariage, they shall [illegible] again be maried by him, but maye marie them selues where thei list, so that they hold nothing of the king. And fo. 168. he saieth ỳ the king shall haue the mariage of all the heires females where thei hold of the king of what age so euer they be as oftē as thei shalbe to marie, so that they can not marrie wōut the kinges licence. Thus is the last clause of this chapter expressely proued by Britton that ỳ comon law did stil remain as it was for the mariage of the heires females in the kinges case and not altered or abreged by the said estatute of. west: primer, & therfore was ỳ statut in ỳ 39. yere of king H.6. the last chapter made in this wise. Item de auisamēto, assensu et aucthoritate pred. ordinatū est & stabilitū qd mulieres existentes etatis. 14. annorū tempore mortis anteçessorū suorū absque questione seu difficultate habeant liberacionē terrarū et tenētorum suorum sibi descensorum quia sic lex istius terrę vult quod tunc ipsi haberent. How beit this statute prouides not wher thei be within the age of. 14. yeres at the deth of their auncester, ideo quere. For as our late bokes go sins Brittons time the king hath lost his prerogatife, vpon what occasion I know not, but I woulde
35. H. 6. 46. gladlie lerne, for Fortescue saies. 35. H. 6. that when the heir female sues her liuerie she takes no oth that she shall not marie as the kinges widow doeth, and therfore saieth he it should seme she should make no kyne yf she marie without licēse. Howbeit Littelton saies that if the heir female be of the age of 14. yeres at ỳ deth of her ācestor and marie her self without license, that she shall make a fine, for it amoūteth to an alienacīō. For after issue had the husband is become the kinges tenāt and he solte shall doe homage in his owne name. And yet afterwardes in ỳ 15. yere of E. 4. ỳ same Littelton saies ỳ ỳ latter clause of ỳ same statute is void, for the

doughter

ther which is inward marynge her ſelf to an other wo
out l[illegible]cence ſhal not make a fine to ỳ king. Thus by the ar-
gum[illegible]t of the ſaid boke of.35.H.6.it aperes that they take the
king to be bound by the ſaid ſtatut of.w.1.and make him no
better then a comon perſon, wherat I haue no litle meruel
ſins he is not named in the ſaid ſtatute. For in the ſaid boke
it is agreed by ỳ court that if the king after the age of 14.
yeares and before 16.do marie the heir female ſhe ſhal haue
liuerie foorthwith vpõ the mariage, although ſhe then bee H.35.H.6.in
not of the age of xvi.yeares becauſe that ſhe was of full age Fitz ti, Gard.
before as it is there ſaid, that is to ſaie, as ſone as ſhe was. P.71.
14. And ỳ ii.yeres ouer is but only geuen for the mariage,
which when it is once had and the.14.yeres paſt the kinge
or lord leſe theire intereſt. And ſo it was granted that if ſhe
were maried before the age of.14.and after her huſbãd dies
before the ſaid age when ſhe comes to the ſaid age of.14.ſhe
ſhal haue liuery. And there it was alſo ſaid ỳ theſe ii.yeres
were geuen to the lord to tender her mariage in, for the ten
der before was void, becauſe it was wõ ỳ age of 14.yeres.
But note ỳ if the heire female being vnder the age of 14.
yeres falleth in to the kinges handes as ward becauſe of cer
ten lands that her father held of the king in cheefe, & by re
ſon therof the king hath alſo the lands in ward which are
holden of other in ſocage, in this caſe when ſhe comes to the
age of 14.yeres and is vnmaried ſhe ſhall not haue liuery of
theſe landes holden in ſocage, and yet by reſon of them the
king hath not the mariage of her. But what then? ſhe can
not ſue her liuerie by parcels, and that is the cauſe that the
hole land ſhal tary in the kings hands til a hole liuerie mai
be ſued of them all, and this apereth in the newe Natura bre
uium fo.289. And laſt of all note ỳ this latter clauſe extends
not to women that clayme by purchaſe but onlie by diſcẽt.
And therfore it aperes.15.E.3.that where it was found vpõ 15.E.3.1 Fitz
the Diem clauſit ỳ the wife was iointly infeffed with her ti.Liuere. P.
huſband 31.

husbād she had an ouster le main without findinge any lycen-
tie of her mariage. And note also that by the comon law yf
one will marry the kings niese, that is to saie, his bondwom̄,
without licence he shal paie a fine vnto the king, as aperes in
Fitz ti. Trauers. P. 36. 33. E. 3. li. Assisarum.

The fifth chapiter.

ET si vna hereditas que de Rege tenetur in capite descē-
dat pluribus participibus tunc omnes illi heredes faci-
ent homagium Regi et illa hereditas quę de Rege te-
netur participabitur inter heredes illos ita quod quil'z
eorum extunc partem suam tenebit de Rege.

This statute is somwhat declared by a statute longe time made before, that is to saye in the 14. yere of king H. the. 3. called statutum Hibernie de coheredibus **which for the better declaracion of this prerogatiue I haue also here noted.**
Hēricus dei gratia rex Anglie domin' Hibernię et dux Aqui-
tanię et Normannī, comes Andigauie dilecto et fideli suo Ge-
rardo filio Mauricij Iusticiar' Hibernie salutē. Cum milites de
partibus Hibernię nuper ad nos accedentes nobis ostende-
runt quod cum hereditas deuoluta sit inter sorores in terra
nostra Hibernie Iustic' nostri in eisdem partibus itinerant' in-
certi sunt, vtrum post natę sorores tenere debeant de primo-
genita sorore et ei facere homagiū an non. Et quia predicti
milites petierūt certiora qualiter in regno nostro Anglie in ca-
su consimili hactenus vsitatum fuit, sic ad instantiam eorundē
vobis significamus, quod in regno nostro Anglie talis est lex
et consuetudo in hoc casu, quod si quis tenuerit de nobis in
capite et habuerit filias heredes ipso patre defuncto āteceſso-
res nostri habuerūt, et nos semper habuimus et cepimus ho-

magium

magnum de omnibus huiuſmodi filiabus et ſingule earum te-
nerent de nobis in capite in hoc caſu. Et ſi infra etatem fue-
rint, nos habebimus cuſtodiam earum et maritagium ſingu-
larum. Si autem de alio domino tenuerint et ipſe ſorores in-
fra etatem fuerint, earum dominus habeat cuſtodiam et ma-
ritagium ſingularum, et primogenita tamen faciet homagi-
um domino pro ſe et omnibus ſororibus ſuis, et alie ſorores
cum ad etatem peruenerint facient ſeruicia dominis feodi
per manus primogenite. Nec poteſt primogenita ea ratione
vel occaſione, a poſtnatis ſororibus homagium vel cuſtodi-
am vel aliquam aliam ſubiectionē exigere, vel habere. Quia
cum omnes ſorores ſint quaſi vnus heres de vna hereditate,
ſi primo genita poſſet habere homagium aliarum ſororum
vel cuſtodiam petere, tunc eſſet illa hereditas diuiſa, ita quod
primogenita ſoror eſſet ſimul et ſemel de vna hereditate do
mina et heres. Heres autē ſue partis, et domina ſororum ſua-
rum, quod quidem in iſto caſu fieri non poſſit, cum ipſa pri-
mogenita nihil poſſet petere plus quam alie ſorores niſi capi-
tale meſuagium ratione einecie. Preterea ſi primogenita hu-
iuſmodi homagium a poſt natis ſororibus ſuis acciperet, eſ-
ſet quaſi domina earum, et habere poſſet cuſtodiam earum
et filiorum ſuorum, et hoc eſſet quaſi committere agnū lupo
ad deuorandum. Et ideo vobis mandamus quod predictas
conſuetudines quas in regno noſtro Anglie habemus in hoc
caſu vt predictum eſt, in terra noſtra Hibernie proclamari ac
firmiter teneri facias et obſeruari. In cuius rei &c. Teſte me
ipſo apud vveſt. ix. die. Februarii. Anno regni noſtri. xiiii.

Before the makinge of this ſtatute called ſtatutum Hiber Glauil li. 7.
nie it appereth by Glanuill which wrott in ỳ tyme of kinge
Henry the ſecond that the huſband of the eldeſt daugh-
ter ſhould do homage vnto the Lorde for the hole inheri-
taunce and that the other daughters or theyr huſbandes
ſhoulde

ſhould do their ſeruice for theyr tenemēts vnto ỳ chiefe lord by
ỳ handes of theldeſt ſiſter or her huſband, and yet they for ỳ
ſame ſhould not be bound to do anie homage or fealti to the
eldeſt ſiſter or her huſbād durīnge theyr liues, ne yet ỳ heires
that come of them in the firſt degre or ſecōd degre. But the
heires in ỳ third degre by the lawe of the Land were boūd
to do homage & to paye relefe for their tenements vnto the
heire of the eldeſt daughter Quod nota. And the reaſon of
it after the minde of Bracton which agreeth with Glanuille
is this, that when iſſue deſcendeth of them to the 3. or. 4.
degre it is not like that iſſue ſhould faile of their bodies,
and then may the heires of theldeſt daughter take homage
verie well. for it is vnlikely that the eldeſt daughter or her
heires ſhoulde then haue the ſame by diſcent, for theſe be
his wordes, Quia cum ſint heredes tres de herede in heredē
extunc vix poterint deficere, et ideo tunc ſequitur homagi-
um abſque dāpno et periculo donatoris. For if ther were like-
lyhode of the diſcent, in this caſe ỳ takinge of homage ſhould
be rather hurtfull then beneficial: For by the antiēt Lawes
if one had infeffed an other to holde of him and had taken
his homage, he could neuer be his heire afterwards, but the
next vnder ỳ feoffor & his heires of ỳ kinred ſhoulde rather
haue it. As put caſe before the ſtatute of Quia emptores
the eldeſt ſonne had enfeoffed the middelmoſt to hold of
him and had taken his homage, the middlemoſt dieth with-
out iſſue, ỳ yongeſt ſhould haue had the land and not the el-
deſt becauſe of the homage ỳ he toke: howbeit if there were
no yonger ſonne ne any other heire, then the feoffor might
claime the Land again by eſchete and not otherwiſe: for as
longe as there were any, the feoffor or his heires of whome
the Lands were ſo holden might not haue it. And that Brac-
ton ſheweth alſo in his firſt boke in the title de maritagiis
reuerſis ad donatorē ꝑ defectu heredis. For he hath this text
or ſainge there, quod homagium expellit dominicum et re-
tinebit

Bract' li. de hom capiēd.

retinebit seruicium & quod non potest quis esse dominus et heres: so that you may nowe perceiue that this statute of Irelande agreeth with Glanuill, sauing that Glanuill dilateth or declares the common law farther then this statute doth. Also Bracton saith further in his title of Homage that if the eldest daughter in this case will present the tyme and take homage before she ndeth, she by that leseth the benefite of the discent, & saieth that the reason why the seruyce ought to be done by the eldest for them all is, because ỹ lord shal not be driuen to take his seruice by parcell male, & further saith that although the eldest may not haue homage of her sisters forthwith but must tarry a tyme, yet shall they out of hand do fealtie vnto her, & all the other seruices that are to be done, & the eldest shal do them ouer, whiche is contrarie to Glanuill, for he saith the other sisters shall doe neyther homage nor fealtie. Howbeit Britton fol.175. agreeth with Bracton, and there setteth forth the manner of the fealtie by the yonger sisters to be done to the elder, & saith that it is at the election of the lord whether he will take homage & the other seruices by the handes of the eldest onely for thẽ all, or else of euery sister seuerally for her seruice, for if hee might not so doe, the lord in proces of tyme might happelye lese the wardship of the heires of the other sisters, because of the woordes in the writte of Ward, which are, that the auncestours dyed in his homage, & that would be harde to trye when the homage was euer done vnto him onely by the eldest sister. And Bracton in his said title of Homage sayeth, Cum quelibet soror de facto acapitauerit dño capitali hoc re uocari non poterit a primogen̄ vel eius marito sed semp qd' factum est tenebit quia capitalis dñs quod ei oblat' est non recusabit sed siue tenuerint de dño Rege siue de alio cũ homagium factum fuerit siue ante tercium hered' siue post, statim sequentur releuiũ et alia seruic̄ & a little before that sayeth, si plures sorores de dño rege tenuerint in capite tũc primogenit' missa omnes acapitabunt et homagium faciẽt dño

Regi, and therwith agreeth Britton. fo. 171. And yet fo. 198. ſaieth that theldeſt only ſhall do homage vnto the kinge for her ſelfe & her ſiſters. Thus haue you now therpoſition of ỹ ſaid ſtatut of Ireland by the olde writers, by which ſaid ſtatute & the ſaide writers yt appeareth that this ſtatut of Prerogatiue is but a confirmacion of the common lawe, & doth only ſet forth & declare what the kings Prerogatiue is whē landes holden in chiefe diſcend to twoe coparceners. For in this the king hath a Prerogatiue aboue a comon perſon, alwel for that they ſhal ſeuerallye holde of his highnes, as for that that his highnes ſhall make the partition, for whether they be of full age at the death of their auncestour or within age, or ſome of them of ful age & ſome of them within age, none of them that be of full age ſhal haue any liuerie but w̄ a partition, & that for the kinges benefite: becauſe that vpō the partition euery one of thē ſhal haue for his porciō ſome parte of the landes that are holden of the kinge in Capite. For if ſome ſhould haue for their porcion onlye the landes holden of other, then the king ſhoulde loſe his prerogatiue in thoſe landes hereafter for euer, becauſe ỹ they that haue them when they ſhal dye hold nothing of ỹ kinge in capite: and ſo might the king be deminiſhed of his auncient rights of the Crowne, which were againſt all naturall equitie. Wherefore the lawe was euer they ſhould all holde of the king. And that appeareth by the writs of Liuerie, in which writes there is a prouiſo that euery one of them ſhall haue in her purparte parcell of the landes that are holden of the king in Capite, as you may ſee in the new Natura breuium fo. 292. And this liuery muſt be ſued with a partition or elſe it is miſſued, & it cannot be ſued forth vntill ſuch time as all the writes of Diem clauſit extremū are come into ỹ Chaūcerie & returned, as appeareth. 16. E. 3. And then if all the coperceners be found of full age, then a writ ſhall goe out of the Chauncery to the Sherife to extende the landes, & after

H. 16. E. 3. in Fitz. t. Liueri P. 29.

the

the extent returned, a writ shal goe to therchetour to make partition and liuerie according to thextent therof made, as appeareth in the newe Natura breuium fo.292. But if one of the copercenerg be within age and in the kinges warde, then the partition may be made in the Chauncery then to haue a writ of Liuerie to therchetour of her parte, or else it may be wholly done in the Countrey by therchetour like as they had bene bothe of full age, that is to say, shee of full age being there present in her owne person, and she that is within age onlye by Procheinamye, as it appeareth in the saide newe Natura breuium. fo.294. Whiche writ shalbee returned with the partition and afterwardes enrolled in the Chauncerie. And it shoulde seeme that if after the writ of extent returned she that is of full age do praye a writ of liuerie with a partition, that she shall then neuer after haue a reextent if so be that before it were so highlye extended. Like lawe is it if the partition be not egal, and she notwithstanding will accept it. But in all those cases she that was within age if she haue to litle for her portion, she may haue a writ of participatione facienda against her other copercener or a Scire facias in the Chauncerie vppon the recorde of Partition that is there, to shew why newe partition or extent shall not be made. By which writ if they bee warned and come not, or come and saye nothing, the land shalbe receiued into the kinges hands, and a newe extent made in the presence of the parties, whiche if it be not extended as it shoulde be, they may praye a reextent before partition made: for after partition the prayer cometh to late. And this may ye see in the newe Natura breuium. fo. 65. and in. 2. E. 3. ct. 13 2. E. 3. in E. 1. but learne whether she may defete the partition by entre wout suyng any such writes or no, because the other are in by matter of record, ỹ is to say, by liuerie, wherunto she is also after a maner party. So is it not like ỹ case of a strãger,

Fitz. ti. Liũe P. 8. & 13. E. 1. eodem ti. p. 6.

for a ſtraunger that hath eigne title may enter vppon them after Liuerie notwithſtandinge they haue the poſſeſſion by matter of record. And it is ſaid by Hill. 17. E. 3. that aduow-
27. E. 3. f. 36. ſon aſſigned in Purpartie may be defeated by puttinge debate vppon the preſentment without any other Proces: And note that ſometymes the king is to take a detriment by the liuere with ỳ partition: As take the caſe to be where ſome of them be within age and in the kinges warde and ſome of full age and theyr auncеſtour dyeth ſeaſed not only of Landes holden in chiefe but alſo of Landes holden of other Lordes, they of full age haue liuerie with a partition, now the kinge leeſes the wardſhip of as much of the lands that are holden of other as they haue Liuerie of, and yet if no partition had bene made the kinge ſhoulde haue had the Wardſhippe of the whole til the heire had come of full age,
M. 21. E. 3. 32 as Mombray affirmeth. 21. E. 3. And note alſo that of thinges entier the kinge ſhall haue by nonage of one of them the whole, and the other that bee of full age gett no parte of it ne yet liuerie therof ne partition: as take the caſe to be this: A maner holden of the king in chiefe wherunto aduouſon is appendaunt diſcend vnto three coparceners, and one of them is within age and in the Kinges warde, the other two that be of full age maye ſue theire liuerie for the lande with a partition, but not for the aduowſon: For that ſhall
38. H. 6. f. 10. wholly remaine to the kynge duringe the minoritie of her
& M. 21. E. 3 fo. 34. that is in warde. And this appeareth. 38. H. 6. et. 21. E. 3. And note that if vppon partition made therchetour retourneth that ſome haue theire partes deliuered them and ſome not, becauſe they ſued not to him for it, they that did not ſue, maye at all tymes in the Chauncerie ſue out a writte vntoo Therchetour to haue the ſame deliuered vnto them, in whiche writte there ſhalbee enclоſed. a tranſcripte of the Partition, as it appeareth in the ſaide newe Natura breuiũ fol. 295. and there it appeereth alſo fol. 296. that liuerye with a partition

a partition was sued for landes holden in Burgage: but by likelyhode it was no commen burgage: for as it appeareth the heire did his homage for the saide landes. And note also that if the Coparcener of full age take the parte of her sister whiche is in the kinges Warde by lease or graunt of the kinge Durante minore etate, by this she suspendes the partition: For notwithstanding she haue the one moitie deliuered her with the profites of the other moitie, yet when her sister commeth to full age, both they shal sue a newe lyuerie with a partition, as appeareth in the saide newe Natura breuium. fol. 295.

The sixth chapiter.

SI mulier ante mortem anteceſſoris ſui qui de rege tenet in capite ante annos nubiles maritat' fuerit tunc rex habebit cuſtodiam corporis illius mulieris vſque ad etatem quod conſentire poterit. Et tunc elegat ipſa vtrum maluerit habere virum illum cui premaritat' fuerit vel alium quem Rex ei obtulerit, nullus qui de Rege tenet in Capite per ſeruicium militare poteſt alienare maiorem partem terrarum ſuarum ita quod reſiduum non ſufficiat ad faciendū ſeruicium ſuum, ſine licencia Regis, ſed hoc non conſueuit intelligi de membris et partibus earundem terrarum.

This Chapter containeth twoe matters beinge dyuers in nature, and therfore I entend to seuer and deuyde the one from the other, and the Chapter followinge to adioyne to the latter braunche hereof, because they entrete both of one thinge.

The ſeuenth chapiter.

DE Serieantiis alienatis ſine licentia regis conſueuit rex arentare huiuſmodi Serieantias per rationabilē extentam inde faciendam.

13.H.3.in Fitz.ti.Gard f.147.

This ſtatute is but a confirmacion of the common law. For it is writen in the.13 yere of king H.3. in this wiſe. Thomas ſummonitus eſt ad reſpondendum regi quare abduxit Helenam filiam et heredem E.&c.T.dicit quod ipſe p aſſenſum E.in vita ipſius E.deſponſauit predictam Helenam in facie eccleſie &c.et quia predicta Helena eſt infra etatem et cū ad etatem peruenerit poteſt cōſentire matrimonio vel diſſentire,ideo remanet predicta Helena in cuſtodia dñi Regis vſq; ad etatem vt conſentiat vel diſſentiat &c. **Here it is not ſet furth nor expreſſed what is thage in a woman to cōſent to matrimonie,and that is all that is to be ſought vpō this ſtatute:for** Bracton **in his firſt booke in the latter ende of a chapter which hath this paragrafe.s.** De minoribus qui debent eſſe ſub tutela et Cura dñorum vel parentum ſuth quod femina ſeptimo anno etatis ſue poteſt conſentire matrimonio,et virum ſuſtinere anno duodecimo,**for he ſaieth,** quod femina maius eſt capax doli quā maſculus et quod maturiora ſunt vota mulieris quam viri: **So that by him it appeareth that a Woman maye conſent to matrimonie after ſhe is.vii.yeres of age.And ſo I iudge the lawe was at that tyme taken.For it appeares in the tyme of kinge E.1. that**

13.E.3. in Fitz.ti.Gard p.138

a man that helde by knightes ſeruice maried his heire apparant being vnder age & died,the lorde claimed the wardſhip of the bodye & an iſſue was tendred againſt him, that at the time of the ſaide mariage the infant was of thage of ſeauen yeres,and this iſſue was receiued by the Courte for a good iſſue to barre the lord of the wardſhip of the body, qd' nota, **Howbeit it apperes not by the ſaid booke whether the heire were male or female.&** Wangford **ſaies An.35.H.6.fol.37.**

that

that when a woman is .xii. yeares of age her auncestour may then gather aid to marie her, which saieng argueth as mee seemeth that thee is then mariageable. And also this seemes to make with Bracton, Howbeit the lawe is not so taken in these dales. For she cannot now consent to matrimonie before thage of.12.yeres. This statut spekes onely of the heire female, and yet Cheiny saieth in.7.H.6. that ỳ heir male shalbe taken wiñ the compas of this statute by an equitie, because the statute is beneficiall: And so it should appere.30.E.1. where the sonne was maried in ỳ life of his ancestour then being no more then of thage of.v. yeres, & whē the childe came to thage of xii. yeares thancestour died & the court adiudged in this case ỳ the lord should haue the wardship of the body, to thentent that if the enfant hereafter ere he passe thage of.14.yeres disagree to the firste mariage, the lord may haue the mariage of him: And so it may appere by this booke that this statut is but a confirmation of the common law, for euery lorde shal haue like aduauntage in this case as the king shal haue, & therewith agrees Paston.7.H. 6. adding farther to this that by the order of the comon law before this statut of Prerogatiue, if ỳ heire would haue stād to ỳ firste mariage when he or she came to ỳ yeres of consēt, they should haue paied ỳ double value: & by this statut they pay nothing, & therefore the case was there: The kings tenant in chief hauing a sonne & heir of thage of.14.yeres doth mary hym & dyeth, the king offers the child mariage at the age of.14.yeres, whiche he refuseth, & holdes him selfe to the firste mariage, & adiudged ỳ thenfant might so doe & that for the same he should neuer pay the double value ne single of his mariage, & there Babthorp saieth that if ỳ woman had died the heire beinge within the age of consent, the kinge shoulde haue hadde the mariage of the childe, notwithstandinge that hee was once maried in the life of his auncestour, for yt was no mariage, but at pleasure: and therewith agrees Britton fo.169. Yea although the wife had died

M.7.H.6.11

30.E.3. in Fitz.ti.Gard p.156. & 128

M.7.H.6.11

after the yeares of consent and before the childe had come to thage of xii. yeres, quere of this matter for I am enformed that the lawe is not taken at this daie as the saide booke is in. 7. H. 6.

Now to thother branch of the Statute and the chapter next following the same.

It appeareth by Glanuill in the beginning of his seuenth booke, that euery freeman hauing land whether he had an heire apparant then lyuing or not, or whether the said heire apparant would consent to it or not, yet might he geue some reasonable porcion of his landes with his daughter or any other woman in mariage, or to any man that had don him seruyce, or in almes to any religious house, or to any other whome he would, so the said gifte were made in his health, for in extremitie of sicknes hee might not bee suffered so to doe, lest it should be thought to be done rather of a rage and furie of the mynde, whiche through sicknes for the moste parte commeth to men, then of any good discrecion, and so might he in his gift excede measure. Howbeit suche a gyfte in sicknes was euer good with the consent of the heire or with his confirmacion. Againe if he had manye sonnes, he could not without ỹ consent of his heire apparant geue any porcion of his enheritance to any of the yonger sonnes, for so might he disherit theldest thorough affectiõ ỹ the fathers lightly beare towardes theire yonger sonne more then towardes thelder. But of his purchased lande he might giue the yonger a porcion whether theldest would or not. And if he had none issue he might geeue away all his purchased landes. But of the lands of his inheritaunce he might giue away no more but a reasonable porcion. And if the landes were departible amongest the heires males, then might the father in his lifetime geeue euerye childe what porcion hee would, so it exceded not the porcion ỹ should descend vnto him. And in that case whether the gifte were of landes purchased

thased or of inheritaunce it made no matter. Howbeit neyther Abbot nor Bishop might in any of these cases geue any porcion of their landes away, without the kinges assent or his confirmacion, because theire baronies bee of the almes of the king or of his progenitours. Hitherto haue ye heard what Glanuill hath saide. After this was the Statute of Magna carta made, where in the.31. chapter therof it is written, Nullus liber homo det de cetero amplius de terra sua vel vendat de cetero, quam vt de residuo terre sue possit sufficienter fieri dño feodi seruiciũ ei debitũ quod pertinet ad feodũ illud. Which Statute is but a confirmacion of the comon law, as it doth appere by that that is written in Glanuil, for so one ỹ had helde by knight seruice if he might haue beene suffred to alien ỹ greatest part of his land he would haue aliened the same peraduenture to hold of him but in Socage or by some smal rent, & than hauing so little a liuelyhod left to himselfe, how had he bene then able to haue done the seruice of a knight or a man of warre, or what should his lord haue had in ward to haue founde one to haue done that seruice, surely little or nothing. Wherby the strength of ỹ Realme might haue much decayed: therfore it was a reasonable law to restrain him as me semeth. Howbeit Bracton in his first booke vnder the title, Si ille cui datũ est rem datam vlterius alteri dare possit disputes this matter after a sorte, that is to say, whether ỹ tenant may enfeffe an other agaīst the lords will or not, & he there affirmes he may, yea & that to hold of him by what seruice he will, & calleth it Damnũ absque iniuria, seing that though ỹ wardship be not so good after alienacion to the chief lord as it was before, yet the relief is as good in euery point, & then if the lord be serued either of the wardship or relicke, he hath all that knightes seruice requireth. Howbeit saith he when the tenant is so disposed to sell his land, the lorde shalbee preferred to the sale therof before a stranger geuing as muche as an other will. It semeth by Bracton that it was verie doubtfull notwithstanding

ſtanding the ſtatut of Magna carta whither the kings tenāt might alien his whole tenancy or not. And therefore was ỹ ſtatute of Quia emptores terr' made, where it is prouyded that from thencefoꝛth which is in the .18. yere of kinge E. the firſt & after Bractons tyme, it ſhould be lawful foꝛ euery free man to ſell his landes oꝛ tenementes oꝛ any parte therof at his pleaſure to holde of the chiefe loꝛde by the ſame ſeruice ỹ the feffour helde. Prouided alwaies that by anye ſuche ſales there comes no landes to Moꝛtmaine. This ſtatut remedies the miſchief that was founde in the wardſhip, but not the other miſchiefe that is to ſaie touching the defence of the realme. Foꝛ when one mans lyuinge is ſo diſmembꝛed neyer a one of them is able to doe the ſeruice of a man foꝛ want of lyuehode. Yea and much moꝛe vnable ſince this Statute, then beforꝛe. Foꝛ beforꝛe where he gaue it to hold of himſelf, he reſerued ſomewhat in place of the lande that went from him, where as now he can reſerue nothing of comen right, Notwithſtanding ỹ this ſtatute of Quia emptores terrarū, made it lawfull foꝛ all other mens tenauntes, Yet was it not lawfull by the ſaid ſtatute foꝛ the kings tenants ſo to doe, that is to ſaye, neither to alien the whole, noꝛ any parcel therof without the kinges licence. And that appereth by Bracton fo. 88. Which ſpeakes generally ỹ the kings tenantes in chief cannot diſmember his fees wout his licence. And becauſe that beforꝛe the time of king Edw. ỹ firſte they might haue alienꝛd without licence to holde of themſelfes, as other mens tenauntes might haue done in the like caſe, & thinking it moꝛe lawful foꝛ them ſo to doe after the making of ỹ ſaid ſtatut of Quia emptores thā beforꝛe, it was thought good to pꝛouide ſome ſtay foꝛ the ſame by this ſtatut of Prerogatiue. And yet by ỹ woꝛdes of ỹ other chapter folowing it appereth that the kings tenant by grand ſeriantie, could neuer haue alienꝛd any lands holden by grand ſeriantie wout the kings lyeēce. Foꝛ ỹ was ſo high a ſeruice, as Bracton

in

In his firſt booke in the title de magnis ſeriáciis names it Regale ſeruicium, & ſaith it was firſt inuented wtin this realme in the time of the Conqueſt, that they coulde not diſmember any parte therof without the kinges lycence. For he ſaith in another place in the ſaid booke amongeſt his wrytes of partition. Quod ſeriantia diuidi non debet ne cogatur Rex accipere ſeruiciũ ſuũ per particulas. Howbeit ſince the makinge of this ſtatut of Prerogatiue, ſundry opinions haue riſen in theſe matters as may appere by the ſtatut made in the firſte yere of king E.3. ca.12. Which ſaith in this maner. Item pur ceo que pluſours gents du Realme ſoy pleinont deſte greues deceo que terres et tenemts que ſont tenus en chiefe du roy, et aliens ſans ſon conge ount eſte pris auaunt ceux heures en mains le roy et tenus come forfets, le roy, ne les teigne my cõe forfets en tiel caſe, mes voet et graunt que deſormes de tiels terres et tenementes aliens ſoit reaſonable ſyne pris en le chãcerie per due proces. So that by this ſtatute it appereth they toke the landes to be forfeted that were holden of the kinge in chiefe and alened without his licence. And ſo it appereth by a booke in.14.E.3. wher Wilby ſaith that at this day landes holden by graund ſeriantie and alened without lycence be forfeted. For the ſeruice of one mans body cannot be chãged into another mans body without the kinges aſſent. Also in the ſaid firſt yere of king E.3. the.12. chap. It is prouided in this wiſe. Et auxi come pluſors gents du people ſoye plenont deſte greues per purchaſe de terres et tenẽts que ont eſte tenus des auncẽſtors le roy que ore eſt come des honours, et meſms tiels tenements ont eſte priſes en le maine le roy, auxi ſi come ils euſſent eſte tenus du roi en chief come de ſa corone, le roy voet que mes ne ſoit home encheſon pur nul tiel purchaſe. By this ſtatut it appereth ỳ if a man hold of ỳ king as of any honor which is come to his highnes by diſcẽt from any of his auncẽſtoures, that by reaſon thereof hee ſhoulde not hold in Capite: For that was contrarie to the lawe, as it maye appeare by the wordes of the Statute, whiche ſaithe that the people complayned them ſelues to be greaued hereby, which

14.E.3.in Fitz ti. Quare imp.p.54.

Whiche is to be vnderſtanded vniuſtlye greeued, for by the
woꝛdes in the firſt chapter of Prerogatiua Regis it appea
reth that if it ſhalbe ſaide a tenure in Capite, it muſt bee
holden of ỹ crowne of a long time. s. ab antiquo de Corona
And that is it not when it is but newelye come: and the
ſtatute of Magna Carta. ca. 3. did helpe this matter by ex
preſſe woꝛdes, If ſuche an honour came to the crowne by
waye of eſchete, but not if it came by waye of diſcent oꝛ
anye other waye. And that ſtatute doth ſet foꝛth certeine
honours by name whiche bee not of the auncientnes of the
Crowne, that is to ſay the honour of Wallingfoꝛde, Not
tingham, Bolingbroke and Lancaſter. Therefoꝛe he that
holdeth of the King as of theſe honoures, holdeth not of the
king in chiefe. But other honours there be which of ſo long
tyme haue beene annexed to the Crowne that to holde of
them is to hold in chiefe, as it appeareth in the new Natu
ra breuiũ. fo. 288. & f. 289. Where one helde of the kinge as
of a certeine honour to yeld a certeine rent to the keepinge
of the caſtell of Douer, this was there taken to be a tenure
in chiefe. And ſo it was where one helde of his highnes as
of the honour of ỹ Abbey of Parle. Therefoꝛe learne what
honours be of the auncientnes of the Crowne: and what
not. Alſo there is another Statut made in the. 34. yeare of
the ſaide kinge the. 15. chapiter. which ſaieth in this wyſe.
Item accorde eſt et eſtablie que alienacion de les terres & te
nements faits per gents que teignont du roye Henrie beſayl
au roy que ore eſt ou des auters roys deuant luy, a tener de
eux meſmes, que les alienaeions eſtoiẽt en lour force. Saluãt
touts foits a noſtre ſeignour le roy ſa prerogatiue de temps
ſon aiel ſon piere et ſon temps demeſne. This latter ſtatute
doth argue that the king ought to haue prerogatiue ſince ỹ
tyme of king Edwarde the. 1. & none beſoꝛe. And ſurelye ſo
was the lawe taken, as it appeareth. 20. E. 26. E. 3. & therfoꝛe
to thintent theſe alienacians made in king Hen. 3. dates &

M. 20. E. 3. in Fitz. ti. Aſſ. P. 122. & P. 124. & 26. li. aſſ. eodem ti. P. 146.

beſoꝛe

before ſhould not now be brought in queſtion, this ſtatute was made ſo that his grace ſhoulde haue fyne for all alyenacions without lycence made ſince kinge Edwarde the firſt tyme, but not for any made before. And this ſhoulde be the meaning of this ſtatute, which (vnder correction) is miſtaken by maiſter Fitzherbert in his Natura breuium. fo. 226 Howbeit for myne owne opinion I doe not ſee by al theſe ſtatutes but that the king hath his Prerogatiue by thorder of the common law, at leſt wiſe as the comen law hath ben taken ſince the tyme of king Edwarde the firſte, or elſe hee could not haue it nowe, for any thinge that I ſee prouyded for him by theſe ſtatutes. For this ſtatute of Prerogatiue goeth but to that where his tenaunt in chiefe alieneth the greateſt parte without lycence, Ergo He may alien the leſſer parte without lycence, and ſo doth the ſtatute expreſſely ſet it forth, except you will ſaye there bee twoe licences vnderſtanded here, that is to ſaye a generall lycence by the order of the commen law, and a ſpecial licence by this ſtatute, thone to be requiſite where any parcell is ſold, thother whē the more parcel is ſolde. Therfore enquire and learne what other mens oppinions are vpon this ſtatute. For I fynd no booke to proue it common lawe before Britons tyme, for Glanuill ne Bracton ſpeaketh any thinge of it. And where this ſtatute of Prerogatiue ſpeaketh onely but of knyghtes ſeruice, the lawe is otherwiſe taken. For if one do holde of the kinges highnes in Socage in chief he can alien no pece without lycence. Then let vs ſee what thinges maye bee graunted or done without lycence and at what tyme: And howe the tenaunts that hath lycence ſhall purſue the ſame. The kinges tenaunt that holdeth of hym in chiefe maye graunt a rent charge out of the ſame without licence as it appeareth. 40. li. aſſ. et. 7. H. 6. For the kinge by that ſhall ſuſtaine no detriment. For his highnes nede not to hold it charged except he wil. But if one holde an aduouſon of the king,

40. lib. Aſſ. in Fitz. ti. Licence. P. 4. M. 7. H. 6. f. 2

king, or a rent, & granteth ouer the same without lycence the grauntee shal pate a fyne. And that appeareth. 21. E. 3. 21.E 3.22
For there the case was that vppon licence with a partic an aduowson was allotted solye to one of the coparceners & after by composition betweene her & her fellowes she was agreede to leaue thaduouson againe in common amongest them all & to present by tourne, & adiudged that this was an alienacion, for the whiche she must make a fyne: For before she was tenant solye and now shee is become tenaunt iointly againe with her felowes. The like lawe is it if there be lorde mesne and tenaunt, the kinge is the lorde and the mesnaltie is holden of him in chiefe, if the mesne releaſe to the tenaunt without lycence, he shal pay a fine, as it appeareth 33. li. Ass. and yet the releaſe goeth there by waye of extinguishment, but what then? he holdes now by the seruice the mesne did, that is to saie, in chiefe, and so thereby the tenancy is altered. The selfe same lawe is it if twoe iointenauntes be, and thone releaſe to thother wythout lycence, the king shall seise for a fyne, as it appeareth. 40. li. ass. et. 8 H. 4. For the like reason that is made in the case of the coparceners before. But where there is nothinge but a bare right releaſed whiche goeth by waye of Extinguishement otherwise it is. For they of thexcheker vppon a fyne sur releaſe onelye vse to make out no proces to aunswer the king of an alienacion. The kinges tenaunt in chiefe may make a leaſe for terme of yeares without lycence, but not a leaſe for terme of lyfe, nor no higher interest, as it appeareth. 45. E. 3. and in the new Natura breuium. fo. 193. Then at what tyme or howe he shoulde pursue his lycence: yf the lycence bee graunted by one king he cannot by vertue thereof alien in the tyme of an other kynge as it appeareth 2. E. 3. Lyke lawe yf the landes be in the kinges handes for Primer seisin or alienacion wout lycence, at whych time ỹ king doth licence his tenaunt to make a feffement, he cannot make this feffe-

38. lib. Ass. in Fitz. ti. Fines p. 109

40. lib. Ass. in Fitz. tit. Licece. P. 4. et P. 8. H. 4. tit. eodem P. 1.

P. 45. E. 3. f. 5

P. 2. E. 3. in Fitz. ti. Office de court. P. 39.

ment

ment till the landes bee out of the kings handes, as appeareth.21.H.7. Also he that hath lycence may not varie from it in anye point: As if the king lycence the Abbot and Couent to make a feffement, and thabbot sole will make it thys is void, as appeareth.21.H.7. And there Frowike saide that if the kinge licence mee to make a feoffement by deede, I can not make it without deede Nec econtrario. And herewyth agreeth the booke of.3.E.3. Where the lycence was to leuie a fyne of the maner of Dale to fynde three chapleynes and he woulde haue leuyed the fyne leavynge out the chapleynes & coulde not be suffred. And.30.E.3. the lycence was to leuye a fyne of the manour of Dale yeldynge a rent, and he woulde haue leuied the fyne of the manour with a Foyprise, that is to saye, exceptinge certeine acres parcell of the manour yeldinge the rent, and coulde not bee receiued so to doe, for that should not agree with the licence, which would the whole manour to be charged with the rent. But if there had bene no rent reserued it semes he mought haue alyened any part of the manour by a lycēce of alienacion of ỹ whole manour tamen quere, For it shoulde seeme to be within the woordes of this Statute which woulde you shoulde not dysmember the kings fees, and learne if ỹ king licence his tenaunt to make a feffement, whether hee may make it vpon condicion or not, for they vse when a condicionell feffement is to be made to expresse the condicion within the lycence: & if the condicion be to make an estate againe to the feffour, al this goeth vnder one fyne & in one lycence. And note that if the Iustices before whome the fyne shalbee leuyed be enformed that the landes are holden of the kinge and that so appeare to them by any record, they will not take the fyne till they haue seen the licence nor yet engrosse it till they haue receiued a writ out of the Chauncerie called Quod permittat finem illum leuari, by which they may be fullye certified of ỹ kinges pleasure, which writ apereth in ỹ new

H.21.H.7. 7

H.21.H.7.8.

H.3.E.3.in Fitz.ti. Fines p.164.

18.E.2. in Fitz.ti. Fines P.124.

M.30.E.3.22

Na.bre.f.167

And

and that they haue thus vsed it appeareth 4.E.2.f.33.H.6.

4.E.2.in Fit. ti.Fynes. F. 105. But they neuer vsed so to doe vpon a recouerie in these cō men writs of entre in the post, because ỹ recouerer in such case should paye no fyne: for it was no alienacion since the recouerer claimed not in by the tenaunt. But nowe by the statute made in the.32.yeare of kinge Henrye the 8.it is ordeined that the recouerer in such case should pay a fyne for alienacion. And note that if an alienacion bee made wythout lycence the pardon is moste commonlye made vnto the Feffee and not to the Feoffour. And so I suppose it ought to be, because the wrong groweth by the entre of the Feffee whiche hath entred the kinges fee wythout hys lycence.

M.33.H.6. 48.

14.H.6.27 And therefore the case is 14.H.6.that where the kyngs tenaunt alieneth without lycence, and tooke estate againe to him & to his wyfe in taile, the remainder ouer to his right heires and dyeth without issue, and the kynge pardoneth the wyfe all maner of alienacions, this was thought good to exclude the kyng of his fyne that he should haue hadde for the saide alienacion. And it is further to bee noted that the lycence must bee purchased vppon a true suggestion or else it is voide. For if the kinges tenaunt in taile pretendinge to be tenaunt in fee simple will pourchase lycence to make a Feoffement, this is a voide lycence, as it appeareth

40.lib.Ass.in Fitz.ti.Gard p.1. 40.li.ass. And in all cases where the kings tenaunt in chief will dismember his tenaunt, that is to saie alien any parcel hereof without lycence, the Kinge may distraine for hys whole rent in the parcell so alienedo, but if he haue the kinges lycence to make such alienacion, the alienee shall haue a writ in the Chauncerye called de deonerando pro rata porcione, that he shall no further bee charged then after the quantitie of the porcion that he holdeth. This writt you maye see in the new Natura breuium. fo.262.

The eygthe chapiter.

DE eccleſiis vacantibus quarum aduocaciones ſpectãt ad regem & alij preſentauerint ad eaſdem: Ita qd' contentio inter dominum regem & alios oriatur, ſi Rex per conſideracionem curię preſentationem ſuam recuperauerit licet poſt lapſum ſex menſium a tempore vacationis nullum currit ei tempus dum tamen rex preſentauerit infra tempus ſex menſium.

Of this chapiter I fynde nothyng neither in Glanuile, **Bracton nor** Britton **ne in anye other olde writer before the makynge hereof, ſauinge that I fynd this terte bothe in** Bracton & Britton .s. quod nullum tempus occurrit regi, **whyche** Bracton **in the beginninge of his firſte boke vnder this tytle** que res dari poſſit **applieth vnto liberties appertayninge vnto the crowne ſayinge in this wiſe,** quod illi qui huiuſmodi libertatem ſibi vendicat doceat huiuſmodi ad ſe pertinere quia ſi warrantum non habuerit ſpeciale in hac libertate defendere non poterit quamuis pro ſe pretendit ſeiſinam longi temporis, diuturnitas enim longi temporis in hoc caſu non minuit iniuriam ſed auget nec in iſto caſu currit tempus contra regem nec incumbit ei probatio qd' ad ipſum pertinet cum conſtare debeat ſingulis quod huiusmodi de iure gentium pertineant ad coronam. ſed ſunt alie res que pertinent ad coronam que non ſunt ita ſacre quin transferri poſſunt, ſicut ſunt fundi, terre & tenementa & huiuſmodi per que corona Regis roboratur et in quibus currit tempus cõtra regem ſicut contra quamlibet priuatam perſonam. **This it appeareth by** Bracton **that this terte bothe not ſerue the kynge in all caſes, for preſcription ſhal holde ſometime againſte the kynge in ſuche thinges as a manne maye preſcribe in, as it is commen in oure bookes that one ſhall preſcribe for wayfe and ſtrayfe and ſuch like againſte the kyng. And alſo it appearethe in the** 8.H.5.ti.trauerſe. P.47.

boke in 8.H.5. that the kyng may surceſſe his time: as wher it is founde that tenant for terme of life hath forfaited hys eſtate to the king, whereby the king ought to ſeaſe, yf hys grace ſeaſe not but tarie till he be dead ſo that hee in the reuercion entreth, he can not then ſeaſe, & ſo it may appere vnto you ỹ though this be an auncien tert. quod nullum tempus occurrit regi, yet in caſes it dothe: & where this terte is onely apointed by this ſtatut to ſerue wher the biſhop taketh the benefice by laps, yet by an equitie it is taken in ſome caſes to extende to a plenartie, that is to ſaye, where a ſtraũger hath preſented & his clerk is in by ſir moneths: As take the caſe to be where the king hath aduowſon in ward & a ſtraunger vſurpes and his clerke is in by ſir monethes before the king bringe his Quare impedit, yet ſhall this plenartie bee noe plea againſt his highnes, but that he ſhal recouer: and the reaſon of it is, becauſe els the kynge ſhoulde be witheout remedye. For writ of right he cannot haue hauing but an eſtate in the thinge as gardeyn. Wherefore in thys caſe nullum occurrit ei tempus, for els it ſhould appere that a ſtraunger mighte holde a thinge merelye by wronge againſte him withoute anye good grounde or beeginnynge that can bee intended of it, whiche caſe is agreed. 18. E. 3. et
P. 18. E. 3. fo. 15. 43. E. 3. But yet in this caſe the kynge maye not put oute thincumbent whiche is admitted, inſtituted, and inducted
P 43. E. 3. fo. 12. in the benefice without ſute, that is to ſaye, Quare impedit, beecauſe it is ſo prouided by the ſtatute of. 25. E. 3. capitulo. 3. E. 3. R. 2. cap. 1. Like lawe is it yf the kynges tenaunt be ſeaſed of a manner holden in chiefe to the whiche aduowſon is appendaunt and alienethe the manner wythe the aduowſon wythe out lycence, after the churche becommes voyde and a ſtraunger vſurpes and ſo twentie vſurpacions one after an other, and afterward theſe alignacions without lycence are founde by office, and the churche becomes voyde,

the

the kynge ſhal preſent notwithſtanding thoſe vſurpations,
and if the churche bee full, hys highneſſe maye haue a Qua-
re impedit againſt thincumbent Cauſa qua ſupra. And thys
appeares in.4.Edwarde the thirde. But yf the kynge bee
ſeaſed of an aduowſon in his demeane as of fee, it ſeemes
that plenartie ſhalbee a good plea againſte hym, for there
his highneſſe hathe remedye prouided hym, that is to ſaye,
bye writ of ryghte, and ſo is thoppinion of Sharde & wylby
18.Edwarde the thirde. Quere, for in the bookes of.43. Ed-
ward the thirde, the defendaunt durſt not abide by the plea
but trauerſed the title that was made for the kyng. And
learne whether plenartie be a good plea againſt the quene
whiche holdethe for terme of lyfe the reuercion to the kyng.
for this caſe is alſo left at large in.A.18.Edward the thirde.
Now to the ſtatut, where the woordes be that no laps ſhal
holde againſte the kinge if he preſent within ſyx monethes.
Theſe woordes yf he preſent within ſix monethes be voide,
for thoughe hee preſente not, yet title of laps ſhall not take
place agaynſte hym by this ſtatute, and therefore the booke
is.18.Edwarde the thirde, that where the laps was incur-
red in the life of the kynges tenaunt and beefore the or-
dinaunce preſented the tenaunt dyed and yt was adiudged
that the kynge coulde not preſente wythein the ſyx mo-
nethes, beecauſe his tenaunt was then aliue. What ſay you
then to this caſe, yf the laps dyd incurre after the deathe of
the kinges tenaunt and beefore office found, the kynge not
withſtandinge ſhal haue the preſentment after office found
as it is greed 14.Henrye the ſeuenthe, and yet ther the king
might haue preſented after the deathe of hys tenaunt befo-
re offyce founde and did not. And in the ſaide booke of.14.
H.7.it is left for a queſtion, ſins the ordynary cã not pre-
ſent by laps againſt the kinge, howe & in what manner the

H.4.E.3.in Fits,ti.quare impedit.33.

18.E.3.f. 15. 43.E.3.12.

P.18.E.3.f. 17.

P.18.E.3. 21

P.14.H 7.22

cure ſhallbee ſerued in the meane time that is to ſaye, betwene the laps and the kinges preſentment, ſomme thinke in that caſe that the ordinarye ſhoulde preſente one for the meane time whiche ſhoulde bee remouable alwayes at the kynges pleaſure, and ſome other thinke he ſhoulde ſequeſter the fruites to fynd ꝑ cure Ideo quere. And Bracton li. 3. in the writte of Darrein preſentment ſaiethe that this title of preſentment by laps was geeuen to thordinarie by a conſtitution made in the councell of Lateranenſe.

The nynthe chapiter.

REx habebit cuſtodiam terrarum fatuorum naturaliū capiendo exitus eorundem ſine vaſto & diſtruccione, & inueniet eis neceſſaria ſua de cuiuſcunq; feodo terre ille fuerint, & poſt mortem eorum reddat eam rectis heredibus ita quod nullatenus per eoſdem fatuos alienētur nec quod eorum heredes exheredentur.

This prerogatiue beganne in the time of kynge Edwas yᵗ ſhoulde ſeeme to mee, beecauſe I fynde none that wrote of it before Britton, for Bracton ſpeakes but a lytle of Ideotts in his fifthe boke in the title of exceptions againſte the plaintife where he ſayethe: it is a good exception to the parſone of hym that complainethe or bringeth anye action to ſaye hee is a foole naturall, quia tales non multum diſtāt a brutis qui ratione carent nec valere debet quod cum talibus agitur ſed tamen diſcuſſio huiuſmodi exceptionis diſcrecioni iudicis relinquitur. and ſayethe like lawe is it of hym that coulde neuer heere nor ſpeake from the time of his natiuitie, & quod inuenienda ſunt eis neceſſaria quoad vixerint per officium iudicis pro qualitate perſone & hereditatis quantitate ſi here-

res

res esse debeat & si semel authoritate curatoris adquisierit si fuerit inde eiectus recuperabit per assisam sicut minor. By this it appears that ỹ kyng had no prerogatiue but the iudge. Howbeit Britton.f.167, saiethe that the kinge oughte to haue his prerogatiue herein, for these be his wordes: Et pur ceo que ascun foites auient que ascun heire est sotte naste ꝑ quoy il nest my able a heritage demaũder et garder volum' q̄ tiels heires de qui que ils ne vnques teigõt males & females demurgent en nostre garde ouesq; toutes lour heritages sauant a chescũ seignour touts auters seruices que a luy appendaunt de terre tenus de luy & icy remainount en nostre gard tant come ils duront en lour sotie & ceo ne voilomus nous my de ceux qui deueignount sotes per ascun maladye. Upon these wordes of Britton I note. iij. things, one is ỹ the king shal not haue the custodie during theire liefes but during theire Idiocy, the second notwithstanding the lande is in the kings handes, yet the other lorde shall haue theire seignories, which is by way of petition as I take it: and the thirde is that the other lorde shall not haue the wardshippe of the heire nor of his landes but onely the kynge: whiche thirde thing by this statute of prerogatiue are not so plainely set fourthe, and also by this statute it appeares that the kynge shall haue the custodye of suche Idiottes duryng theyre lyues, for the woordes bee, Et post mortem eorum reddat eam rectis heredibus and not beefore. The manner howe the kynge shall come to his prerogatiue appeares by a booke case. 16. Edwarde the thyrde, where Sharde 16.E.3. in Fits.ti.Liuery.P.30. sayes that when the kyng is enfourmed that there is suche an Idiotte hys highnes shall sende for hym and cause hym to bee broughte beefore hys chauncelloure or some other whom hee shall appoynte, and yf by examinacion hee bee founde an Idiot, yet his hyghenesse oughte not to sease his landes vntill suche tyme as hee bee founde an Idiot by office. And in the newe Natura breuium folio. 262. it appe-

res that the kinge appointes all this matter to the eschetour or sherife bothe to examine and enquire, in whiche sayde Natura breuium folio.229. it appears that this office when it is founde shal haue relacion a natiuitate to auoide al mene actes donne by the Idiot, that is to saye, his feffemente or release: but learne and enquire whether suche feffees shall bee put out by thoffice without anye Scire facias to bee awarded againste them. In 18 E. 32. E.3. a Scire facias was awarded in that case, and learne also whether the office shall haue relacion for the profites from the tyme of hys natiuitie or onelye from the findinge of thoffice. Then to the exposicion, the woordes bee, Rex habebit custodiam terrarum fatuorum naturalium. By these woordes it appere-thethat he must bee a fole natural, that is to saye, a foole a natiuitate: for yf he were once wyse and beecame a fole by chāce or misfortun, ỹ king shal not haue the custody of him, and so it is agreed in.18.E.3. And also in the newe Natura breuium. fol.263. and the manner of the tryall of hym to bee a foole naturall appeares in the sayde Natura brēuium folio.263. that is is to saye, yf hee cannot tell to twēnye pence, or tel his age, or who was his father and mother, or such like thinges: whereby yt may appeare hee hathe no kynd of vnderstandinge in that that is eyther for hys profyte or dammage. But if hee bee learned or apte to learne, thenne is hee no Idiot as maister Fitsherbert there thinks, and Grene sayethe in.31.Edwarde the thirde, That yf hee bee able to begette eyther sonne or doughter he is no foole naturall. The woordes of the statute bee further, Capiendo omnes exitus eorundem sine vasto et destruccione et inueniet eis necessaria sua. By these woordes it appeareth that the kynge maye take the profetes to hys owne vse, fyndynge them theire necessaries. And therefore in the booke beefore of Tricesimo primo of Edwarde the thyrde the kynge dyd not lette the lande vnto one of the colyns

M.18.E.3.in Fits.ti.30.Scire facias. P.10.et.106.

M.18.E.3. Fits.ti. Scire facias.P.10.

M.31.E.3.ti. sauer de defaulte.P.37.

of

of the Ideot yeeldynge a rente (butte theſe wooꝛdes,fin-
dynge them neceſſaryes)is not onelye mente to the Ideottes themſelues, but alſo to all them that hange vpon them,as theyꝛ lyfe chyldꝛen and familye. And alſo by theſe wooꝛdes ſine vaſto & deſtruccione, it appeareth the kynge is bounde to reparacions of theire landes and tenementes. The wooꝛdes bee alſo, De cuiuſcunque feodo terre ille fuerint By thoſe wooꝛdes it ſhoulde ſeeme the kynge ſhoulde be pꝛeferred in thys tytle of Ideotye, beefoꝛe anye other looꝛds whyche myghte clayme the Ideot as hys warde, howebeit learne what other menne thynke therein. Et poſt mortem eorum reddat eam rectis heredibus. By theſe wooꝛdes it ſhoulde appeare that the kynge ſhoulde ſaue the cuſtodye durynge the lyfe of the Ideot, and that than an Ouſter le mayne in nature of a lyuerye ſhallbee ſuyd of the ſame oute of the kynges handes: butte whether yt ſhallbee made wythe the yſſues and pꝛofytes from the tyme of the Ideottes deathe,oꝛ onelye butte from ỳ time of the tender of the Ouſtere le mayne learne, butte yf the landes that the kynge hadde ſo in cuſtodye bee holden of hym in capite, thenne notwytheſtandynge theſe wooꝛdes of the ſtatute yet the kynge ſhall haue wardeſhyppe, pꝛymer ſeiſin, and all other pꝛerogatiues as yf hys tenaunte in thiefe hadde dyed ſeaſed thereof, beynge noe Ideot, as it maye appeere in the newe Natura breuium.fol.289. And there it appeares folio. 285. alſo, that allthoughe the Ideot helde noe landes of the kyng,yet a Diem clauſit extremum ſhallbee awarded after hys deathe to enquire what landes hee dyed ſeaſed of, of whom they are holden ꝛc. And it is to be noted ỳ yf one be foũd Ideot by office & beſoꝛe ỳ king ſeaſeth ỳ lands ỳ Ideot dies,

M.3.E.2.in Fits.ti.Gard. P.5.

yet the kynge ſhall ſeaſe, beecauſe of theſe wooꝛdes in the ſtatute 6. poſt mortem eorum reddat eam rectis heredibus, wheych his grace cannot do but vpon a ſeiſure, and thys appeares 18. Edwarde the thirde. And note alſo that if ther deſcende to an Ideot no poſſeſſion in landes butte onelye a ryghte, bee it righte of entre oꝛ title of entre oꝛ ryghte of action, thy kynge ſhall not enter and haue the cuſtodie of the ſame, as appeares in 1. Henrye the ſeuenth, and yet if hys tenaunt of landes holden of hym by knyghtes ſeruice bee diſſeiſed and dyethe his heire within age, the kynge ſhall enter and holde the ſame in warde: and therfoꝛe learn what is the reaſon that ſhoulde make a differẽce in theſe caſes. The wooꝛdes be further Ita quod nullatenus per eoſdem fatuos alienentur nec quod eorum heredes exheredentur Bye theſe wooꝛdes it appeareth the landes cannot bee alienedby the Idoet noꝛ the heires diſheryted, and therefoꝛe if the Idoet make a feffement oꝛ releaſe of his landes and that founde by office, the kynge ſhall auoyde it as I haue beefoꝛe noted and ſo likewyſe his heires after his deathe by foꝛce of theſe wooꝛdes of the ſtatute. And yet it appeares. 31. E. 3. that a recouerie by default paſſed againſt an Idoet, but erecucion of the iudgement was ſtayed becauſe of the kynges poſſeſſiõ: which pꝛoues that notwithſtanding the kinge haue the poſſeſſion durynge the Idoets life, yet his highnes hathe noe freehold therby but onely a bare cuſtody, foꝛ the freeholde remaines in the heire. And therewythe agrees. 17 Edwards the thirde. But what than: this recouerye is not lyke to this alyenacion. foꝛ by the recouerye the Idoottes heire is not dyſherited by thact of his auncеſtouré yf ſo bee that the recouerye weare vppon a good title. And it appeares in. 33. Henrye ſirte, that an Idoot ſhall not bee receaued to pleade by gardeyne oꝛ Procheyne amye, but he hym ſelfe

M. 18. E. 3. in Fits. ti. Scire facias. P. 16.

1. H. 7, 15.

H. 17, E. 3. 11

P. 32, H. 6. f, 22.

Telle ſhall appeare in proper perſone in euerye accyon broughte agaynſte hym, and whoſoeuer wyll pleade beſte for hym ſhallbee admytted: and learne and enquire yf the Ideot bee but tenaunte for terme of lyfe or yeares yf the kynge ſhall haue hys prerogatiue therein or not, becauſe the Ideot cannot alien that lande to the diſherſon of hys heire: and yf hee ſhall, howe the leſſour ſhall ponyſhe the waſte doone in the kynges tyme. And learne alſo whether the kynge ſhall haue the goodes of an Ideot as wel as lande, thenne laſte of all yf one bee founde Ideot whiche is none in deede. The manner howe hee ſhall auoyde this office appeares in the newe Natura breuium folio. 263 that is to ſaye, hee that is falſlye founde to bee an Ideot eyther by him ſelfe or his frinds ſhall come in to the chaũcerye or beefore the chauncelloure of Englande and the kynges counſell and praye to bee eramyned of hys ideocye, or hee maye ſue a writte out of the chauncerye to hym that hathe the keepynge of hym to bringe hym beefore the kynge and hys counſell to be eramined, and if he be found vpon hys examination to be noe Ideot, then by that is thoffice and all the reſte of the proces auoyded wythoute anye farther trauerſe: howebeit where a Scire facias is awarded agaynſte the feffee of the Ideot, there the feffee appearing vppon the Scire facias maye trauerſe the Ideocye, as it appeares, he dyd in the booke beefore of. 18. Edward the third. And note that by a ſtatut made in the. 32. of Henry the eight the xlvi. chapiter, Ideottes and theire landes bee in the ſurueye of the courte of wardes, and the ſame courte maye let and ſet theire landes but not to graunt the cuſtody of their bodyes for anye wooordes that I can perceaue in the ſame ſtatute.

The tenthe chapiter.

ITem rex prouidebit quando aliquis qui prius habuerit memoriam & intellectum non fuerit compos mentis ſue ſicut quidam ſunt per lucida interualla quod terre et tenementa eiuſdem ſaluo cuſtodiantur ſine vaſto & deſtructione,& qd' ipſe & familia ſua de exitibus eorundem viuant & ſuſtineantur competenter, & reſiduum vltra ſuſtentacionem eorundem rationabiliter cuſtodiatur ad opus ipſorum,liberand' eiſdem quando memoriam recuperauerint, ita qd' predicta terre et tenementa infra predictum tempus nullatenus alienentur,nec rex aliquid de exitibus percipiat ad opus ſuum. Et ſi obierit in tali ſtatu, tunc illud reſiduum diſtribuatur pro anima eiuſdem per conſilium ordinarij.

It appearethe bye Bracton **in hys fifthe booke amonge therreptions to the perſone of the playnetyfe that it is a good ereption to ſaye that hee that ys demaundaunt or plaineti|e is of** Non ſane memorie. **For theſe bee hys wordes.** Competit etiam tenenti exceptio peremptoria ex perſona petentis ſi petens furioſus fuerit, vel non ſane mentis quod diſcere neſciat, vel quod omnino nullam habeant diſcretionem: tales non multum diſtant a brutis que ratione carent,nec valet quod cum talibus agitur durante furore. Poſſunt enim quidam aliquando dilucidis gaudere interuallis, & quidam habent furorem perpetuum: quod

quod autem actum fuerit cum talibus tempore quo diluci-
dis gaudent interuallis ratum erit, ac si cum alijs ageretur
siue furorem suũ simulauerint siue nõ, acquirere quidẽ
non poterunt in ipso furore vel cum non fuerint sane
mentis aliqui qui consentire non possunt nec adquisita
alienare vel dare, quia alienacioni non magis consentire
possuut quam adquitsiioni, sed seisinam retinent quia
animum mutare non possunt quẽ acquirendo cum essẽt sane
mentis habuerunt & furor superueniens nichil adimit non
maius quam morbus incurabilis, sicut lepra: secundum
quod dicitur quod multa impediunt contrahendo que
non dirimunt contractum, & ita sunt multa que impediunt
promotionem, que non deiciunt iam promotum. Et tali-
bus de necessitate dandus est tutor vel curator. So it ap-
pearethe by Bracton that in his tyme yt was thoughte
expediente that folkes that weare destraughte shoulde ha-
ue a tutoure or one that shoulde take the charge of them,
whyche offyce sens is reuolued vnto the kynge and
made parcell of his prerogatiue. For as Fitsherbert in
hys Natura breuium folio. 262. verye well sayethe. The
kynge ys the protectoure of all hys subiectes and of all
theire goodes, landes and tenementes, and therefore of
suche as cannot gouerne them selues nor order theire
landes and tenementes hys grace (as a father) muste
take vppon hym to prouyde for them, that theye them sel-
ues and theire thinges maye bee preserued. And beecause
that Lunacye or madnes ys not frome the tyme of ones
byrthe, (as Ideocye is, butte commeth sometymes bye M. 3. E. 2. in
fytes or courses) hys grace therefore can clayme no cer- Fits. ti. Gard
tayne interesse in the lunatike persone, lyke as hee P. 5.
maye doe in the Ideot: and therefore it ys ordeyned that

hys

hys grace ſhall prouyde for ſuche in the tyme of their fayde Lunacie or maladies, that theye or theire fameliye maye be ſuſteyned, and theire thinges preſerued accordinglye as it is ſette forthe in this ſtatute. And learne whether the kinges intereſt is ſuche that after the deathe of the lunatike or the recouerye of hys wittes agayn there muſt be an Ouſter le mayn ſued as it is ſued in the caſe of ỳ Ideot, or els that ỳ kinges intereſte is aduoyded maintenaunt by the deathe, or recouery again of the lunatike parſon.

The eleuenthe chapiter.

ITem rex habebit wreckum maris per totum regnum Ballenas & Sturgiones captas in mari vel alibi infra regnum exceptis quibuſdam priuilegiat' locis per regem.

Thys prerogatyue the kynge euermore hadde by the order of the common lawe, as maye appeare by Bracton in his ſecond boke vnder the tytle Que res dari poſſit: wher he ſayethe in this wyſe, Sunt etiam alie res que pertinent ad coronam propter priuilegium regis & ita communem non recipiant libertatem, quin dari poſſunt & ad aliud tranſferri, quia tranſlatio nulli erit damnoſa niſi ipſi regi ſiue principi. Et ſi huiuſmodi res alicui conceſſe fuerint ſicut vvarrecum maris, Theſaurus inuentus, Craſſus piſcis, ſicut Ballena & Sturgio & alie piſces regales, oportet, ſi queſtio inde habeatur, qd' illi qui huiuſmodi libertatem ſibi vendicat doceat huiuſmodi ad ſe pertinere, quia ſi vvarrantium non habuerit ſpeciale in hac libertate defendere non poterit, quamuis pro ſe pretendat

ſeiſinam

ſeiſinam longi temporis, diuturnitas enim temporis in hoc caſu non minuit iniuriam ſed auget, nec in primo nec in ſecundo caſu currit tempus contra regem, nec ad ipſum incumbit probatio qd' ad ipſum pertineat, cum conſtare debeat ſingulis quod huiuſmodi de iure gentium pertineat ad coronã. And alſo in another place of the ſaide booke vnder ỹ tytle, De libertatibus quis eas concedere poſſit, he ſaieth Habebit rex pre ceteris omnibus in regno ſuo priuilegia de iure gentium propria que de iure naturali eſſe debeat ſicut Theſaurum, wrecc̃u, Craſſus piſcis. Sturgio, waiuę̃ in nullius bonis eſſe dicuntur, & dicuntur priuilegia, que quamuis ad coronam pertineant, a corona ſeperari poſſunt, & ad priuatas perſonas tranſferri, ſed de gratia ipſius regis ſpeciali cuius gratia & conceſſio ſpecialis ſinon interuenerint tempus a tali peticione regem non excludat, & in hoc caſu comprobatione non egeat, quia nullum tempus currit contra eum. And in this agrees Britton fo. 26. t. fo. 85. ſo that by theſe wꝛiters yt ſhoulde appeare that at this time no man mighte pꝛeſcribe in wreke de le mere, And that the lawe was then ſo taken it maye appeare by theſe wooꝛdes wythin the ſtatute, ſcilicet, exceptis quibuſdam priuilegiatis locis per legem which argues that that muſt be by the kinges graunt foꝛ no place can otherwiſe bee pꝛiuileged by the kynge. Howebeit Hull' and Thirn̄ in n. H. 4. think that a manne maye pꝛeſcribe in wreke de la mere, tamen quere, foꝛ this ſtatute and Britton & Bracton are ſince the time of lymitation, that is to ſaye, king R. the firſt, The wooꝛdes of the ſtatute bee farther, Ballenas & Sturgiones. Bracton in his ſeconde booke vnder the title of wreke de la mere ſayes, quod de Sturgione ita obſeruatur, quod rex habebit illum integrum propter ſuum priuilegiũ, de Ballena vero ſufficit ſecundum quoſdam ſi rex inde habuerit caput & regina caudam. So in Bractons tyme it was doubted by the comon lawe whether the king ſhoulde haue this greate fyſhe calde Thirpole holye oꝛ not. And ſo lyke wiſe in Brittons time, as yt maye appeare in M. 11. H. 4. fo. 15.

his

his booke.f.27.which nowe this statut hath made clere and without question.

The twelfthe chapiter.

ITem habebit escaet' de terris Normanorũ cuiuscũq; feodi fuerint,saluo seruicio quod pertinet ad capitales dominos feodi illius, et hoc similiter intelligendum est, si aliqua hereditas descendat alicui nato in partibus transmarinis, & cuius antecessores fuerunt ad fidem regis Francie de tempore regis Iohannis & non ad fidẽ regis Anglię,sicut contingit de baronia Monumete postmortẽ Iohannis de Monumeta cuius heredes fuerũt de Britañ & alibi de feodis aliorũ recuperauerit Henricus plures escaetas de terris Normanorũ occasione predicta,& eas contulit tenẽdas de capitalibus dominis feodi per seruitia inde debita & consueta.

It Appereth by the Cronicles ỳ king Iho̅ was ỳ last duke of Normandie & that in his time Normandy was lost,wher upon king Henry his sonne as it may appeare by the later clause of this chapiter recouered diuers escheates of lande within this realm holden by Normãs, which after they be gã to adhere to ỳ Frẽch king ỳ kings enemy & became tray tors vnto his highnes,they forfaited al their lands by order of the cõmõ law to the king of whõsoeuer they were holdẽ. Howbeit in such cases after ỳ forfaiture,if the king had geuẽ theese lãds to any other he might not haue geuen them to holde of him selfe,but onelye of them of whom they weare before holden:as this statute plainelye declareth that king Henry the third so did. And likewise in 20.E.46. E.3.it appeareth that if the king do otherwise,his patent shallbe repelled and made to holde of the lordes of whom the landes weare holden before the treason,and that by a petition of ryghte to be sued vnto the king for the redresse of the same,

M.20.E.3.ti. Assi.in Fits. P. 124. et p.46.E.3.ti. Peticion .P. 19.

for

for other remedie haue they none, & diſtrayne they may not, as appeareth in the newe Natura breuium f. 180. And further it ſhould appeare by the ſayde boke of. 20. E. 3. that the king ought not to reteyne ſuch land in his owne handes no longe but muſt diſpoſe thē ouer to holde of them, that were lordes thereof at the time of the treaſon committed. Hereby may you gather that this ſtatute in his firſt braunch is but a confirmacion of the common law, and that long time before the makinge hereof kinge H. 3. had this prerogatiue, as it dothe manifeſtlye appeare in the later braunche thereof. And alſo by Bracton in his firſt boke in the title De cuſtod' & maritagijs dnorum, and likewiſe in Britton folio. 28. The woordes of the ſtatut be further. Hoc ſimiliter intelligendum eſt ſi aliqua hereditas diſcendat alicui nato in partibus tranſmarinis et cuius anteceſſores fuerunt ad fid ēregis Francię de tempore regis Iohannis Anglię, ſicut de baronia Monumete poſt mortem Iohannis de Monumeta, cuius heredes fuerunt de Brittannia vel alibi. By this braunch it ſhoulde appeare that at this time men of Normandy, Gaſcoign, Guion, Angeo & Brittain, were inheritable wīn this realm as wel as Engliſh men, becauſe that they wereſomtime ſubiect vnto the king of England and vnder their dominion vntil king Ihons time as is afore ſaide, and yet after his time thoſe mē (ſauynge ſuche whoſe landes weare taken awaye for treaſon) weare ſtill inheritable within this realme, till the makynge of this ſtatute. And in the time of peace betweene the twooe kinges of Englande and Fraunce theye weare anſwerable within this realme if they had broughte anye action for theire landes and tenementes, as it doth plainly appere by Bracton in his fifth boke in ꝑ title De exceptione quia alienigen̄, for theſe be his woords. Eſt aut̄ alia exceptio q̄ competit tenenti ex perſona petentis propter defectū nationis q̄ dilatoria eſſet nō perimit, actionē. Vt ſi quis alienigena qui fuer' ad fidē regis Frācie & actionē inſtituit verſ⁹ aliquē

aliquē qui fuerit ad fidem regis Anglię, talis nō respondeatur saltem donec terre sint communes, nec etiam si rex ei cōcesserit specialiter placitare, quia sicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita non debet alienigena & Francigena qui fuerit ad fidem regis Francię audiri placitando in Anglia. Note here that he sayethe that this exception is but dilatorie and not peremptorie, whiche proueth that hee shall haue his action at an other time, that is to say, in the time of peace. And also he sayeth after, Donec terre sunt communes, which is as much to say vntill suche time as there is peace betwene Fraunce & Inglande. Also Bracton in his thirde booke vnder the title quod mulier ostendat warrantum per quem petit dotem sayethe si warrantus fuerit ad fidem regis Francię & excipiatur de warranto remanebit dotis exactio in suspenso imppetuum vel ad tempus saltem donec terre fuerint comunes. This warrant of dower is the heire of the husbands for by thaūcient law if a woman had brought her writ of dower against any other but the heire, he was not bounde to aunswere her dower vntill such time as she had brought forth her warraunt that is to say, the heire. In like case after shee is endowed she is not bounde to aunswere to anye other without the heire, and if it might appeare that the heir had no righte in the second part, then shoulde shee be barred of her action of dower, as it appeareth in the case before that hys right is suspended when he is a Frenchmā and the .ij. realmes at warre. Howebeit it appearethe as I haue sayde before that this exception is not peremptorie, but that after the twoe realmes be agayne at peace, she shall haue her dower. The wordes of this braunche be also in the Copulatyue, that is to say, that the auncestor must be of the allegeaunce of the Frenche king, & that the heire of the sayd aūcestor is born in ỹ part of beyond sea. I put case than that the auncestour were of the allegeaunce bothe of thone kynge

and

and the other that is to say the Frenche king and the kyng of Englande whether is this within the compas of this statute? For Bracton in his saide .v. booke vnder the title De exceptione quia alienigena saith. Quod sũt aliqui qui sunt ad fidem vtriusque sicut fuit W. comes Mareſcallus & manens in Anglia et Michaell de Seins manens in Francia et alii plures, et ita tamen quod si contingat guerra moueri inter Reges remaneat personaliter quilibet eorum cum eo cui fecerit ligeantiã. Whereby it shoulde appeare that of suche as were in allegeaunce to bothe kinges, the kinge shoulde haue no eschetes of their landes. For the woordes of the statute bee not onlye ad fidem regis Francię, but also et non ad fidem regis Ang. ideo quere. And whoe shalbee inheritable at this daie that bee borne in the parties beyonde the sea, and who not. See the statute therof made in the .25. yeare of king Edwarde .3. de natis in partibus transmarinis.

The thirtenth chapiter.

QVando aliquis qui de rege tenet in Capite in fata decedat et heres eius ingrediatur tenẽtum qd' anteceſſor ſuus tenuit de rege die quo obiit antequam fecerit homagium regi et ſeiſinam ſuam ceperit per regem tunc nullum accreſcit ei liberum tenemẽtum. Et ſi obierit ſeiſitus per idem tempus vxor eius nõ habebit dotem de tenemento illo, ſicut contingit de Matilda filia comitis Hereford vxoris Manuſel mareſcalli, qui poſt mortem wilhelmi Mareſcalli Anglie fratris ſui cepit ſeiſinam caſtri et manerii de Scrogoill, et obiit in eodem caſtro antequã

intraſſet per regem et feciſſet ei homagium, et vnde concordatum fuit quod vxor non haberet dotem, eo quòd vir ſuus non intrauit per Regem immo per intruſionem, ſed hoc non intelligatur de Socagio et paruis tenuris.

This Statute is but an affirmacion of the commoñ lawe, as it maye appeare by the caſe cõpriſed in the ſame which was ruled before the makynge of thys ſtatute and iudged accordinge to theffecte hereof. And this ſtatute ſeemeth too putte a paine vppon the heires that will entrude before they haue ſued theire lyuere, and taketh awaye from them the fres holde that the lawe had elſe veſted in them: And yet it is not taken ſo generallye as the woordes bee, but ſpecially and onelye of intruſions after office founde, and not before: And therefore if the heire enter after the deathe of hys auncеſtour and before office founde, and the kynge pardoneth him all entries with the profites, this is good and amounteth to a ſpeciall liuere, ſo that the heir needeth to ſue no moe liueries, and yet if thentruſion were after office and then the kinge woulde pardone him it were void, bycauſe that at the tyme of the pardone he had no freeholde whereuppon the pardon might enure. Like lawe is if the
A.3. H.7. 2. heire before office enter and make a feffement and ỹ kynge pardone the feoffee it is good, and yet ſuche a feffement after office with a pardone were voide, for the reaſon I haue made before. Like lawe is if thentrie before office and the pardone after office this is voide, becauſe that by office the kinge taketh the poſſeſſion from the heire or feffee, and then is there no poſſeſſion whereuppon the pardon maye enure: And ſo voide. For the office when it is founde hathe relacion from the death of the kynges tenaunt, if it bee ſo that the kinge doe not releaſe his right before thoffice
P.16.E4.1. founde, and that appeareth. 16. E. 4. where it is alſo ſayde that the pardone muſt bee as well of the profites as of the entrie,

entrie, or elles after office founde the kynge shalbee aunswered of the profites and. 13. Henrye. 4. there is a difference put betwene the pardone that is made to the heyre, and the pardone that is made to the feoffee: For in the case of the feoffee the pardone must bee speciall reherſinge all the matters. Then let vs see further for the endowement, if after the death of the kynges tenaunt the heire dothe not enter but dye before office founde, hys wife shall bee endowed because of a possession in lawe that was in hym. M.13,H.4.

Like lawe is it if hee dye after office founde and beefore anye entrie. Like lawe is it if hee entre before office and dye. But if the kynge bee once seised by office and the heire dye before licence and the nexte heire will enter beefore a Deuenerunt sued and dyeth, hys wife shall not bee endowed, for in that case it is an intrusion after office. For when the kynge is ones seised by office this seisine remains till liuerte or ouster le maine be sued. And these cases are 1.et.4. H. 7. The woordes of the Statute bee further sed hoc non intelligatur de Socagio, et paruis tenuris. These woordes are to bee intended of common Socage, for if hee holde of the kynge in Socage in chiefe and wyll intrude after office, nullum accreſcit ei liberum tenementum, no more than if the landes were holden by knyghtes seruice in chiefe. And it is a generall grounde that in all cases where hee that sueth hys generall lyuerie or ouster le mayne miſsueth the same and entreth thereby, thys entrye is an intrusion vppon the kynges possession, and hys wyfe of that possession shall not bee endowed as appeareth. 2.et.24. Edward.3. 1.H.7.3 4.H.7.fol.2 M.38.E.3.35 24.E.3.f.34. H.21.E.3.22

The fourtenth chapiter.

ITem Rex habebit escaetas de terris libere tenentium Archiepiscoporum et Episcoporum quando ipsi tenentes damnati sunt pro felonia facta tempore vacationis, dum temporalia eorundem fuerunt in manu domini regis, conferend' cui voluerit imperpetuum, saluo seruicio quod ad dictos prelatos inde p ertinet et fieri consueuit.

Of this statute I fynde no booke case, Howbeit the letter of it is verie plaine and needs no maner of exposicion. For it goeth not to anye other eschetes than suche as growe vpon offences. And if the crime or offence were done whyle the lande was in the kinges handes, notwithstandinge the partie were not attainted thereof vntill suche time as the landes bee out of the kinges handes, yet the king shal haue the eschete by force of this statute. And heare it appeare the howe the kinge shall not hold the landes forfaited still in his handes but must geue them ouer to hold of them that they were holden of before.

The fiftenthe chapiter.

QVando dominus Rex dat vel concedit alicui manerium vel terram cum pertiñ, nisi faciat in charta sua vel scripto expressam mentionem de feodis mill' aduocationibus ecclesiarum, et dotibus cũ accidunt ad predictum manerium vel terram pertineñ tunc his diebus rex reseruat sibi eadem feoda, aduocationes cum dotibus licet inter alias personas non fuerint obseruata.

It is agreed in. 43. E. 3. that by the order of the comon lawe before this statut, if ỹ king had ben seised of a maner to the which aduouſõ had bene appẽdãt, & had geuen it to me, notwithstanding that in the kinges grant there hadde bene no mencion made of the auowſon nor of theſe woordes cũ ptiñ, yet thauouſon hadde passed from his highnes by the sayde grant: for in thoſe dates ỹ king was but a comon parſon, & a writte of Enter ſur diſſeiſin, & all other actions did lye agaīſt him as againſt any other comon pſon. And therefore in 20. H. 3. A writte of entrie was brought againſte one ſuppoſing ỹ he had no entrie but by diſſeiſin, which ỹ king did to the demaundant when he was vñ age, & alſo Wilby. 24. E. 3. repoꝛteth ỹ he hath ſene a writte which was Precipe H. regi Anglię, in place wherof is now geuen Petition by hys Prerogatiue. And ſo it is ſaid. 22. E. 3. ỹ tyme of king H. 3. and before the king ſhould be empleded as any other comẽ pſon. But king E. his ſonne ordeined that none ſhould ſue him but be driuen to their petition. Howbeit (ſauing reformacion of theſe bookes) I think the law was neuer ſo that a man ſhould haue any ſuche accion againſt the kinge. For Bracton which wrote in king H. 3. time or nere thereupon, ſaith in his. iii. booke vnder ỹ title Contra quẽ cõpetit aſſiſa in this wiſe: Inter cetera videndum eſt quis ſit ille qui deiecit, Princeps ex potẽtia vel aliquis nomine ſuo vel iudex qui male iudicauerit, an priuata perſona, ſi princeps vel rex vel alius qui ſuperiorem non habuerit niſi deum, contra ipſũ non habebitur remedium per aſſiſam, imo tantum erit locus ſupplicationi, vt factum ſuum corriget et emendet, quod ſi non fecerit, ſufficiat ei pro pena quod deum expectet vltorem, qui dicit, mihi vindictam et ego retribuam, niſi ſit qui dicat quod vniuerſitas regni et Barronagium ſuum facere poſſit et debeat in Curia ipſius regis, ſed ſi alius ex facto et diſſeiſina principis ſtatim vel ex poſt facto in ſeiſinam inſtiterit, quamuis talis incidat in aſſiſam et in penam vel tantum ad reſtitutionem ſecundum quod ſeiſina ad ipſũ peruenerit ſtatim vel

M 43 E. 3. 19

A. 20. H. 3. ti. aſſiſe. in Fitz. p. 431

M. 24. E. 3. f. 23

H. 22. E. 3. f 3

ex poſt facto ſine principe tamen conueniri non poterit per aſſiſam, quia licet quodamodo diſſeiſinam fecerit tamen non per ſe ſed cum alio. s. cum principe et ita quod ſine eo reſpõdere non potuit, et ita non procedit aſſiſa. Indirecte tamen et quaſi ex incidenti et ſine breui comprehendi poterit perſona principis ad hoc quod factum ſuum emendet, vel in pſonam ſuam redũdabit iniuria manifeſte, vt ecce. Eſto quod impetretur aſſiſa tantum ſuper eum ad quem res tranſlata eſt ſine principe, et qui tenetur ad reſtitutionem et ad penam, vel ad minus ad reſtitutionem, et ipſe reſpondeat quõd ſine principe qui fecit iniuriam per ſe vel per ſuos reſpondere non debeat, quia ipſe princeps per ſe fecit iniuriam vel ipſi duo inſimul, extunc erit factum et iniuria in manu domini regis, qui dici debet in facto quaſi warrantus, et quod tunc poterit ſi warrantus voluerit factum ſuum emendare quaſi a lege compulſus, et quam in perſona ſua cum ſit ei ſubmiſſus debet firmiter obſeruare. So that by Bracton it appeareth that no accion lyeth againſt the kinge but the partye greeued is dryuen to ſue to the king by petticon. But the reaſon why that aduowſons ſhoulde paſſe in the kings caſe by the order of the common lawe thoughe it were not expreſſed in the graunt was this I ſuppoſe, becauſe that landes or tenementes were not then compted as thinges that touched the roiall eſtate or that made the kynges crowne lyke as Liberties or fraunchiſes did. For the one a comon perſone might haue as well as the kinge, but the other none might haue but the king or ſuche as were able to ſhewe his grant therof, and therefore ſaith Bracton in his firſt booke vnder the title que res dari poſſint that for landes currit tempus contra regem ſicut contra quamlibet priuatam perſonam. Which is as much to ſay, that if the king had right to any ſuch landes or tenementes and hadde ſurceſſed his time ſo longe, that it exceeded the time of limitation in a writte of right, his highnes hadde loſt then his right for euer. And herewith agreeth Briton fo. 29. But that is (ſaith Britton) of landes, parcell of the kinges eſchetes or pourchaſed

landes

landes, and not of the auncient demeasnes of his crowne, for of those nullum currit ei tempus, if hee haue anye righte to demaunde them. So that by Britton this reason will not serue for landes parcel of the crowne. Ideo quere veram rationem. Howbeit since this statute made, what landes soeuer they be those thinges that are comprised in this statut passe not without making expresse mencion therof. Hetherto we haue spoken of the reason why at the common lawe aduowsons shoulde passe by graunt of the manour without being named, now let vs see how since the makinge of this statute it shal lykewise passe by graunt of the manour without being expressely named and how not. And if the kinge render vp to him that was in warde, at ful age, his landes or to a bishopp his temporalties, although he make no mencion of knights fees or auousons, yet all passe therwith, for like as the kinges seisine in suche case is by these woordes omnia terra et tenementa, without speakinge of fees or auowsons, euen so being sued out of his handes by these woordes, omnia terre et tenementa, fees and auowsõs Liuerie p.7.
do passe without making any mencion thereof. And this ap & T 16 E.3.
peareth. 5. E. 3. 4. 16. of the same king. Where after the death p.30.
of an ydeot, the king rendred againe the lands to the heire not making mẽtion of fees or auousons, & yet he had them. And likewise 41. et 44. E. 3. the kinge graunted the temporalties to one that was elect bishop before he was cõsecrat, H.41.E.3.f3
& alledged ẏ fees & aduousons passed wout making any mẽ- 44.E.3.f.22.
cion therof, & yet at ẏ time of the graunt he was not bishop, for he lacked consecracion. And ẏ reson in all these cases is, for that ẏ king was but seised in another bodies righte and by his liuerie he geueth nothinge vnto them but only restoreth thẽ to their right they had before. Like law should it appere to be by Finchden. 29. E. 3. If aduowsõ of a church be ap- H.29.E.3.in
pẽdãt to a Priorie which Priorie is seised into ẏ kings hãds Fitz.ti. Quare impedit
by reasõ ẏ an alie is patron of it, & afterward ẏ king dimiseth the p.190.

the saide Priorie cum pertineñ, not makinge mention of thauouson vnto the saide Prior yelding a rent, to haue & to hold the same during the warre. And his reason is this, for that ỹ right & freehold in this case remaineth still in ỹ Priour notwithstandinge any such seisin, & the kinge is but to haue an annuel profit therof, & no right, but if anye bee to sue dower or liuerie wõ a partition out of the kinges hãdes they by that cannot haue thauouson if mencion be not ther of made, no more than they can that claim by Graunt: and yet the king rendreth them the thing in respect of a right be fore, as he doth in ỹ other cases. But what then: they claim not ỹ whole lande that is in the kinges hands but only pat cell therof, & then thauouson euermore abydeth with that that remaines, if expresse mencion be not made therof, and so not like the cases before where the king makes liuerie of the whole. And this case appeareth also in the said booke of 5. E. 3. And note that in al cases wher ỹ king seiseth a thing as his owne proper right as he doth in the case of wardes, eschete, & such like, there nothinge passeth by Graunt of the appurtenance if expresse mencion be not made of the thinge that is appurtenant by name: & therfore the case was. 29. E 3. That where auowson of a church did belong to a Priorie which Priorie was seised into ỹ kings hãds ratione guerre, & letten againe to ferme for a rent to ỹ Prior, & afterward the king graunted away the patronage of the Priorie to a man & to his heires, & the custodie (duringe the warre) of ỹ Priorie with al that belongeth to the same & of the rent reserued wõ al the profites of ỹ Priorie ỹ the king had seised, & yet thought ỹ thauouslõ passed not, for ỹt was not named. But if there be woordes in the kings grant that do amount to as much as therpresse naming of ỹ thinge or conteruaile as much, then the thing passeth as farre fourth as if it were expressely named. And therefore if a maner to the which auowslõ is appendant be in ỹ kings hands by eschete or purchase & the king geueth the manour as fully & as wholly as

suche

ſuche a one helde the ſame before the ſchete or pourchaſe, in this caſe thauouſon palleth, & ſo it is agreed. 43. E. 3. fo. 19. And learne for aſmuch as this ſtatute maketh mẽcõ but of thꝛee thinges, that is to ſay, knights fees, auowſons of churches, & dowers, whether in ſuch caſe any other thinge than auouſon which is appendant or appurtenant, ſhould paſſe by woꝛdes cũ ptiñ without naming of it. For it appereth. 18 H. 6. that where a Lete was wõ a towne & the king granted ỹ towne cum ptiñ not naming ỹ Lete, & it was thought the Lete ſhould paſſe thereby. But ỹ reaſon was there becauſe it was parcel of the towne, & that ỹ is parcel or incident to an other thing, palleth by graũt of ỹ king wout making any mencion therof. And therfore if ỹ king be ſeiſed of a coꝛodie by reaſon ỹ he is a patron of a Pꝛiorie, & graunteth away ỹ patronage wout making any mencion of ỹ Coꝛody, yet ỹ grãtee ſhal haue ỹ coꝛodie: & ſo it is iudged. 26. li. aſſ. & yet ỹ kings grãtee of a ward ſhal not haue gard p cauſe de gard if eꝛpꝛeſſe mention be not made thereof. And ſo is it if one bee to haue reſtitucion of the auouſon vna cũ exit & the church becometh void, & the king makes him reſtitution wt the meane iſſues & pꝛofits taken, yet he ſhal not haue this auoidance ỹ is ſo fallen wout eꝛpꝛeſſe mencion be made therof in his reſtitucion, as appeareth. 18. 24. 39. et. 46. E. 3. And yet if ỹ king be ſeiſed of auowſõ & the church betõmeth void & he granteth ỹ auowſon away, his highnes ſhal not nowe put noꝛ take the benefite of ỹ auoidance, as appereth. 9. E. 3. Fitz. Graunt in Fitz. tit. Preſẽtmẽt al eſgl p. 5. Therfore enquire what the reſon is of theſe diuerſities & what is ment by theſe woꝛdes in ỹ ſtatut. Dotibus cũ acciderit ad predictũ maneriũ vel terram ptiñ. For as I ſuppoſe thoſe woꝛdes ſerue to none other purpoſe but wher ỹ king is to aſſigne dower, & he graũteth ouer ỹ maner Durante minore ætate of the heire ỹ is in ward to another, this patentee ſhal not haue the aſſignement of dower if mencõ be not made therof in his patẽt. Howbeit learne & enquire what is ỹ true meanig of the ſaid woꝛdes.

P. 18. H. 6. 12

26. li. aſſ. p. 53

P. 18. E. 3. 21.

P. 24. E. 3. 27

M. 39 E. 3. 27

P. 46. E. 3. in Fitz. Graunt. p. 60.

The

The laſte chapiter

ITem Rex habebit omnia catalla felonum damnatorū et fugitiuorum vbicunque fuerint inuenta et ſi ipſi habeant liberum tenementum tunc illud ſtatim capietur in manum domini regis, et Rex habebit omnes exitus eiuſdem per vnum annum et vnum diem, et tenementum illud vaſtabitur et deſtruetur de domibus, boſcis et gardinis, et aliis quibuſcunque ad predictum tenementum ſpectantibus, exceptis hominibus quorundam priuilegiatorum inde per regem. Et poſtquam dominus rex habuerit annum, diem et vaſtum, tunc reddatur tenementum illud capitali domino Feodi illius niſi prius faciat finem pro anno die et vaſto de conſuetud' tamen dicitur quod poſt annum et diem terre et tenementa felonum in Glō reddentur et reuertentur proximo heredi, cui debuerant deſcendiſſe ſi felonia facta non fuiſſet, Et in Kent **in Gauelkinde the father to the boughe, the ſonne to the ploughe.** Ibidem omnes heredes maſculi participabunt hereditatem eorum, et ſimiliter femine: ſed femine non participabūt cum maſculis. Et mulier habebit poſt mortē viri medietatem pro dote ſua. Et ſi mulier fornicetur in viduitate perdet dotem ſuam, vel ſi fit deſponſata viro. **Before this ſtatute** Glanuil **did write in this wiſe in his bi. booke vnder the tytle.** De vltimis heredibus. Notandum quōd ſi quis de felonia conuictus fuerit, vel confeſſus in curia et de domino rege tenuerit in Capite, tunc tam terra quām omnes res mobiles ſue et catalla penes quemcunque inueniantur, ad opus domini Regis capientur ſine omni recuperatione alicuius heredis ſui. Si autem de alio quām de rege tenuerit is qui vtlagatus eſt vel de felo-

de felonia conuictus tunc quoque omnes res eius mobiles Regis erunt. Terra autem per vnum annum remanebit in manu domini regis. Elapso autem anno, terra eadem ad rectum dominũ scilicet ad ipsum de cuius feodo est reuertetur, veruntamen cum domorum subuersione et arborum extirpatione. Et generaliter quotiescunque aliquis aliquid fecerit vel dixerit in curia propter quod per iudicium curiæ exheredatus fuerit, hereditas eius ad dominum feodi de quo illa tenetur tanquam Eschaeta solet reuerti. Foriffactura autem filii et heredis alicuius patrem non exheredat, neque fratrem neque alium quam se ipsum. Preterea si de furto fuerit aliquis condemnatus, res eius mobiles, et omnia cattalla sua vicecomiti prouincię remanere solent, terrã autem si quę fuerit dominus feodi recuperabit statim non expecto Anno. By this it should appere that in Glanuilles tyme, for theft oneiye the thirise shoulde haue the goods that were forfaite, and that as it shoulde seeme to his owne vse, and not to the kinges. For hee saieth, the lordes in that case shoulde recouer their eschetes before the yere, daye, and the waste. Howbeit, the statute made since that time geues all felones goodes to the kinge without anye exception. And hereuppon it is to be seene firste what is compriſed in thys woorde catalla. Catalla is a generall woorde whiche comprehendes as well Chatels mouable as not moueable. For leases for terme of yeares are within this woorde catalla, as appeareth by Bracton in his seconde booke in the tytle of Forfaiture of Felons saying quod terminum annorum erit domini regis, vt catalla. Quia accipit terminum ad similitudinẽ catallorum. And therewith agreeth the booke in 39 H.6. Also vnder this woorde catalla is taken the issues and profites of landes and tenementes of them ỹ flye for felony vntill suche time as they bee attainted or acquited. And like wise of the Landes and tenementes of clerkes conuicte, vntill suche tyme as hee hath made hys purgacion, I 39.H.6.37

meane

P.4.E.2.in Fitz. Forfaiture.p.1. 16.E.3.Corone.p.356, 296.et.344.

meane lands & tenements as wel of their wiues right as of their owen right, & so is the booke. 4.E.2.et.31.E.3. Also vnder this word contra are take the emblements ỹ were growing vpõ the ground at the time ỹ the forfaiture of ỹ goods first began to take place, as appereth 3.E.3. Also vnder this word Catalla is cõprised a right of actiõ to goodes, as wher goods be taken away wrongfully frõ the felon or wher one is endetted to the felon by obligacion or is accomptable to ỹ felon for any receites or other wise, & this appeareth. 6.H. 7.et.19.H.6. Also vnder this word Catalla, is take sometims goodes wherin the felon hath no propertie, as if a man deliuer money out of a bagg, or corne out of a sacke to one to kepe which is afterwardes attainted of felonye, the money or corne in this case is forfaited. Like law it is if a thief that steales goodes seuerally from sundry persons & afterwarde is attainted for one of ỹ said felonies, by this one attainder the goodes that are stolen from the other bee also forfaited to the king. Like lawe is it if one steale goods and before he be attainted therof he killeth him selfe or byeth in prison or abiures the realme confessinge an other felonie then that for the which he fled to the churche, in these cases he forfaiteth the gooddes that hee did steale. So it is if the wife kill her husbande, shee forfaites the goodes of her husbande. And these cases ye maye see in the title of Corone in Fitz.p.317.323.334.318.162.319.380.379.423.

P.6.H.7.in Fitz ti. Forfaiture.p.12. M.19.H.6. fo.47. et H. 30,H.6.fo.5. P.28.E.3.92 et t.Trauers 32. lib. Ass. P.33.

44.E.3.f.39. 26.li.ass.p.32

And in the title of Auowrie p.151. And in the title of Forfaiture p.15. Then let vs see further what may be saide vppon this word Felonum, If thoffence that is committed be felony, then is it properlye within the compas of this woorde Felonum, & he that committes thoffence shalbe saide Felo. Notwithstanding that he therefore shal not suffer death: as in a case where one killeth another se defendendo or by misaduenture, this offence is felony, and hee that committes it shal forfait his goodes notwithstanding that hee obtayne

pardone

pardon of life. For it was at ỹ kings pleasure to graunt pardon or not. And this appereth.15.E.3. But so shal not he that killeth one that woulde robbe him in his house, Or the officer that killeth one that will not be rested, nor hee that killeth any thing not yet borne, as a childe in his mothers bellye, nor the parsone that is straught that killeth another in his madnesse. For in all these cases it is not felonye. The woordes bee further, Damna terre & fugitiuorum. Sometimes the king shall haue his chatell, although he be not condemned of the felony as if a man be arrested for felony and afterwardes breakes the arrest and the other ere hee can take him againe killes him, in this case hee that is killed shall forfaite his goodes, and yet hee was neuer attainted of thoffence. Like lawe is it if hee were killed in ỹ firste arrest where he woulde not bee arrested. And this appeareth.3. E.3. Howbeit since that tyme there was a statute made.anno.34.E.3.cap.12. Which seemes to alter the lawe in these cases if it bee not that you will say peraduenture that he shall forfait them quia fugam fecit. Ideo quere. Hee that is felo.de se shall forfaite his goodes and yet hee was neuer attainted. Like lawe is before, of the clerk conuict. And so is it of suche as stande mute or challenge aboue the nomber of.12 enquestes, as appeareth.34.Ed.3. Then further, this woorde fugitiuorum is taken suche as flee or withdraw themselues for the felonye that they bee endyted, appealed or accused of, for that makes a great presumption against them, as Bracton saieth in his seconde booke vnder the title Ad quę restituaturvtlagatus, and for that presumption sake shall the vtlawrie proceade whether hee bee giltye of the felonye or not. And also saieth hee in the saide booke quòd vtlagati de feloniá gerunt caput lupinum, & secum suum portant iudicium, ita quod sine iudiciali inquisitione pereunt, quia merito sine lege pereũt, qui secundum legem viuere recusauerunt, et hoc ita si in capiendo fugiant

Coroñ. 116. Felonie. 599. Dower. 183.

Coró. p. 312. et. p. 290.

H 34 E.3. in Fitz. Eschet. p. 10.

vel

vel ſe defendant. Si autem viui capti fuerint vel ſe reddiderint, vita illorum et mors eſt in manu domini Regis, et qui taliter captum interfecerit reſpondebit pro eo ſicut pro alio niſi ſit in locis vbi conſuetudo ſe habeat in contrarium. videlicet in com̃ Hereford et Glouc̃.

And in an other place hee ſaieth, Quod nullum crimen maius inobedientia, quia pro contemptu et inobedientia poterit quis excommunicari, ſicut pro quolibet peccato mortale, cum omnes ſubditi debeant eſſe Regi tanquam precellenti, maxime in honeſtis, et ducibus eius tanquam ab eo miſſis, et ſic concordat lex diuina aliquantulum cum humana. And alſo ſaieth quod vtlagatus de felonia foriffacit patriam et amicos, foriffacit quę pacis ſunt, foriffacit quę legis ſunt, foriffacit quę iuris ſunt, et poſſeſſionis, et foriffacit actionem ante vtlagariam ſibi datam. Thus by the waye haue I noted vnto you ſuche thinges out of Bracton, as mee ſeemeth bee notable, and make ſomewhat for this purpoſe: Althoughe I needed not to haue gone ſo farre as to outlawrie for expoſition of this woorde fugitiuorum, but might haue reſted at the flyenge. For if one flee for the deathe of a man, and this preſented before the Coroner, hee ſhall forfait all his goodes that hee hadde the daye of that preſentment or at anye time ſince, till hee bee acquited of the ſaide deathe. And notwithſtandynge that an enqueſt vppon hys arraignement doth afterwarde acquyte him, and alſo fynde that hee did not flee, yet his goodes remaine ſtill forfait, as it appeareth. 22. lib. Aſſiſe. p. 96. et 3. Edwarde the thirde. Lyke law is it where one arrayned of felonye beefore iuſtices is founde not guilty of the felonye, Howbeit it is founde that hee withdrewe himſelfe for the ſaide felonye, nowe ſhall hee forfaite his goodes but no profites of landes as hee ſhall doo in the other caſe where it is found before the Coroner, For when the forfaiture

Forfaiture. 32. et. 35. Coron. 296. & 344

ſhal

ſhall haue no further relation, but to the daye of the preſentment and not to the daye of the kyenge, then when at the ſame daye hee is acquited of the felonye, then is the kynges title gone as to the landes and ſo conſequentlye gone as to the iſſues. And this appeareth. 3. Edwarde. 3. Coron. 344
Alſo there is an other maner of kleynge, for the whyche a manne ſhall forfait his goodes, and that is where in appeale or enditement of felonye, the partye that is appealed or endited will not appeare, but ſuffer the exigent to be awarded againſt him, hee thereby forfaiteth hys goodes and the profites of hys landes, whiche he hadde the daye of the exigent awarded, or at anye tyme after. And notwythſtandinge that hee afterwardes happen to bee acquyted of the ſayde felonye, yet the forfaiture remaines, For when hee tarrieth the awardynge of therigent it appearethe of recorde that hee hath withdrawen hymſelfe, and thys you ſhall fynde in. 22. lib. Aſſ. pl. 81. and 41. li. Aſſiſe. 41.Aſſ.p.18.
Howbeit herein is there heede to bee taken leſt there bee errour in the awardynge of the ſaide Exigent: For if there bee, hee ſhall then forfait nothinge, as if the exigent bee awarded againſte the acceſſorie beefore it bee awarded againſt the principall, or beefore the principall bee attaynted, or if an exigent bee awarded againſte one that hathe a charter of pardone for the felony of elder date, than is the awardynge of therigent and hath founde ſuertye accordynge to the ſtatute and the ſame retourned into the chancerye beefore therigent awarded: For in theſe caſes he ſhall P 43 E.3.15.
auoyde the forfaiture vppon the matter ſhewed.
Contrarye lawe it is if after the exigent awarded the appelle doe abate for inſufficience, or for that that hee that is outlawed was empriſoned meane betweene the awardynge of the exigent and the outlawrie pronounced.

For

For in that case if he reuerse the vtlarie, yet his goodes re-
Forfaiture. main still forfait. Howbeit if he were emprisoned at ỹ time
31.et.19. of the erigent awarded otherwise it is, & this appereth.19.
E.3.and.30.H.6. Also it is to bee noted that one maye flee
for felonye and yet hee shal forfait nothinge, as where one
is arrested for suspicion of felonye and escapes, yet for thys
hee shall not forfait his goodes if hee were not taken with
the maner or at the sute of the partie or endited of the same
Coron. 224. as it appeareth.42.li. Ass. Quere if hee bee endited after-
warde whether hee shall then forfait them or not. Also an
accessorie after the felonye committed shal forfait nothinge
vppon a Fugam fecit. Otherwise it is of accessories beefore
the felonye committed, as it appeareth.4.H.7. But he that
Forfaitur.10 withdraweth him selfe but for Petit larcenie shall forfayte
Coron. 406 his goodes, as it appeareth.8.E.2. tamen quere. And note
for a generall rule that the townesship where the goodes of
felones or fugitiues bee founde shal alwaies aunswere the
kinge of them, and the shiriue, of the issues and profites of
the landes: and therefore the townesship may seise them for
the kinge. For it is no plee for them to saye they were not
22.Ass.p.81. deliuered vnto them. And this appeareth in Fitzherbert, in
41.H.4.39 the title of Coroner pl.390.et p.366.300.347.290.308.22. and
in the title of forfaiture pl.32. But at what tyme the goods
of a felone or fugitiue shalbee seised it is further to bee seene
and howe the attainder shall haue relacion. When it is
founde by enquest beefore the coroners quod fugam fecit,
by and by the shiriue shall seise his lands into the kynges
handes by woorde onelye without taking anye enquest for
the same purpose, and also shall seise all his goodes into the
kinges handes, and take an enquest as well of free menne
as of villeines to apprise them and cause the prise to be en-
rolled to the coroners and to deliuer them to the townesship
to make aunswere thereof to the kynge, And this appereth
22.lib.ass.pl.96. And herewith agreeth the statute of Coro-
ners

ners and alſo Britton.fo.4. Where you ſhall ſee this mat-
ter ſet fourthe moze fully. And in. 43. it is ſayde that the M.43.E.3.
kinges miniſter may ſeiſe ꝯ goods of a felō befoze attaider, & fo.21.
if the partie finde ſuertie then he to leaue them in the cuſto-
die of the partie bꝛ els in the neighbours cuſtodie. Fꝛo the
ſayd miniſter ought not to carrie them alwaye with him. & T.7.H.4.
7.H.4. Hull ſayeth ꝯ yf one bee endited of felonie, yet till hee fo.41.
bee attaited his goods ſhal not be remoued out of his houſe,
but in the meane time ſhalbe in his neighbours keapinge
and he to be found of the ſame. And in the Regiſter there is
a Wꝛite quod tenta et bona taliter capta videantur, imbre-
uientur et ſaluo cuſtodiantur per balliuum ipſius capti qui ſe
curitatem regi inueniēt ei reſpōdēd' ſi &c. ſaluis inde ipſi capto
et familie ſue neceſſariis quam diu fuerit in priſona. And ſo
is Britton.fo.17. Howbeit now by ꝯ ſtatut made in the firſt
yere of kinge Richarde.3. the thirde ca. it is oꝛdeined ꝯ none
ſhall ſeiſe the goods of any perſon arreſted oꝛ empꝛiſoned
befoze that they be attainted, oꝛ that the goods bee otherwiſe
foꝛfaited, vpō peine to pay the double value therof. This ſta-
tute extendeth not to any other but too ſuch as be in pꝛiſon:
Fꝛo by the ſtatute de proditionibus 25.E.3.ca.14. If one bee
endited of felonie which is not empꝛiſoned, the ſheriue at ꝯ
ſecond Cape ſhal ſeiſe his goods, and yet they bee not at that
time foꝛfaited. And alſo the ſtatut of.R.3. doth not extend to
landes but onely to goodes. Then foꝛ the relacion as foꝛ the
goodes it hath no relacion but onely from the daye that the
foꝛfaiture is pꝛeſented oꝛ verdit geuen, and therfoꝛe it is ſayd
in 33. E.3. that if he ſell them befoze hee bee attainted the
ſale is goode, but foꝛ landes it hathe relacion to ꝯ daie of the
felonie committed, be it that the attainder bee by verdite oꝛ Forfeture, 30
vtlarie as it appereth.38.E.3.et 30.H.6.oꝛ be it that he bee at 30.H.6.f.5
tainted without pꝛoces of law, as in the caſes aboue remē- 38 E.3.fo.37.
bꝛed where he is killed in the fleing, as appereth 3. E.3. And Corone.290
note that if thattainder and the office found of his landes be et 285.

both wtin the yere of the felonie firſt cõmitted ꝑ it ſhal haue no relation for that yeres profites, otherwiſe it is if it be after ꝑ yere, as it appereth 3. E. 3. This boke muſt be vnderſtãde as I take it where the attainder & the office be before any daye of paymẽt within ꝑ yere. The wordes of this chapter be further. Et ſi ipſi habeant liberũ tenẽtũ tunc illud ſtatũ capietur in manum domini regis et rex habebit omnes exitus eiuſdem per vnum annũ et vnum diem et tenementũ illud vaſtabitur et deſtruetur de domibus boſcis et gardinis et aliis quibuſcunque ad predictum tenementum ſpectãtibus: It ſhould appere by Glanuile in the beginning of this chapter that the common law was as much before the making herof in all caſes of felonĩ ſauig for theft, in which in ꝑ king had no yere and daye. Nowbeit after Glanuiles time the ſtatut of Magna carta was made which ſayd in the 2 2 chapter therof. Nos non tenebimꝰ terras illorum qui conuicti fuerint de felonia niſi per vnum annum et vnum diem et tunc reddantur terre ille dominis feodorum. By this it ſhould ſeme this ſtatute doth remitte ꝑ waſt becauſe it ſpeaketh nothing of it or ells peraduenture you will ſaye that this word Niſi argues and ꝓues ꝑ the kinge before the ſtatut of Magna carta might haue holdẽ it as longe as he would, but to the cõtrarie of that expoſition is Glanuile, as it appereth before: And alſo Bracton which wrote ſomwhat after this tyme: For by Bracton in his ſecond boke it appereth that before ꝑ making of the ſayd ſtatut of Magna carta the king had nothinge els but the waſt, and to thentent he ſhould remitte ꝑ waſt, the yere and day was afterward geuen to the kinge: For theſe be his wordes in the title of Vtlarie. Si vero terrã liberam habuerint vtlagati, ſtatim capienda eſt in manum domini regis et tenenda per vnum annum et vnum diem, ad capitales dominos poſt terminũ illũ reuerſura ſi de alio tenuerit quã de rege, ſi autẽ de rege tunc erit Eſchaeta ipſius regis, et hoc verũ eſt quod per talẽ terminũ remanebit in manu domini regis niſi ipſe capitalis dominus vel aliuꝰ finẽ fecerit pro termino regi habẽdo ſed que ſit cauſa quare terra remane

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bit in manu domini regis, videtur quod talis est, quia reuera cū quis fuerit cōuictus de aliqua felonia in potestate domini regis erit prosternandi edificia, extirpandi gardina, et arandi prata et quoniā huiusmodi vrgebantur in graue dānum dominorū, pro cōmūni vtilitate prouisū fuit quod huiusmodi dura et grauia remanerent, et quod dominꝰ rex propter hoc haberet cōmoditatē totius terre illius per vnū annū et vnū diē, et sic omnia cū integritate reuerterētur in manus capitaliū dominorū, nunc autē petitur vtrū. 6. finis pro termino et similiter pro vasto. Et nō video rationē quare, nisi quod terminus bene poterit esse per se sine vasto eo quod fugitiuus et vtlagatus non solū delinquit erga eū qui sequitur et appellat, sed erga regē cuius pacē infrīgit contra fidē suā cui tenetur, quia quilibet cū faciat sacramētū, iurat salua fide domini regis. Thus our autors agre not vpō this yere & day, for Bracton is contrarie to Glanuille ꝑ wrote before him. Howbeit Brittō which was likewise before ꝑ making of this statut of Prerogatiua agreeth wō Bracton, as it appereth in his boke fo. 14. adding further ꝑ the kinge shal not haue ꝑ yere and day of land ꝑ is holden only for terme of like or yeres or by freshe disseisin or in fee ferme or in mortgag. And so is Bracton also therwō agreing in his secōd boke but now sins the time this statut of prerogatiua was made, which geueth the kinge as you may perceiue bothe the yeare day & the waste. And first he saieth quod rex habebit omnes exitus cuiusdē per vnū annū et vnū diē. By this it should appere ꝑ the kynge should not haue the issues of ꝑ land but by a yere & a day, but yet it is clere ꝑ he shal haue the issues also from ꝑ time of ꝑ felonie done vntil ꝑ time his highnes hath had ꝑ yere day & waste, & not ꝑ lord (allowing ꝑ that is to be alowed for ꝑ finding of ꝑ prisoner) for it can not be intēded ꝑ ꝑ lord shoulde haue ꝑ meane profits, because the lād shalbe deliuered vnto him wout profit, ꝑ is to saye wasted & destroyed. And therwō agreeth the boke in 3. & 49. E. 3. And there it appereth ꝑ if an office be foūd 20. yeres after the attainder ꝑ kinge shal haue the profites from ꝑ time of the felonie cōmitted vntill

3. E. 3. in Fitzti. Corone. 290. 49. E. 3. fo. 17. 49.

the yeare and daye next after the office founde. For though the lord be entitled to haue theschete, yet the kinges title for the yeare daye and waste goeth beefore the lordes. For the wordes bee Postquam dominus rex habuerit annum diem et vastum tunc reddatur tenitum illud capitali domino Also by this worde Reddatur it semes the lord can not enter into his eschete after office found, but is driuen too sue an ousterle main for the same out of the kinges handes, as it appereth 8.E.2. but if a stranger abate before office, the lord shal haue a writ of eschete againſt him and recouer, and yet that notwithstanding when an office shalbe founde, afterwarde the kinge may seise for the yere, daye and waste, and shalbe aunswered of the mesne profytes like as it is when the kinges tenant in chief dyeth his heir of full age an extrãger abateth, the heier maye haue assise of mort dauncestore if he will, and recouer againſt the abator, and yet vpon an office found afterward the kinge shall seise for p̃mer season and be answered of all the meane profites, and the heir driuen to sue liuerie. Further then let vs see in what cases the kinge shall haue annum, diem et vastum and in what not. The kinge shall not haue annum, diem et vastum of clerks conuict after verdit, because hee forfetes no land. Like lawe is it of lands in Gauelkinde where the father is hanged, but otherwise it is if he be outlawed or abiured for felonie, for there the kinge shal haue the yeare, daie & waste, and this appereth 3.E.3. et 8.E.2. If the husband be atteinted of felonie the kinge shall haue the yeare, daye and waste of the lãds of the wife, and yet in ỹ case the lordes shall not haue theyr eschetes. But what then? the husbãd might haue done waste and the wife had had no remedie for the same, and by the same reason the kinge maye doe as much, and this appereth 3.E.3. And also in Bracton in his second boke. And also it shoulde there appeare that the wiefe is driuen to sue an ouster le main after the death of her husbande. If one be arest

8.E.2. in Fitz ti. Trauers Pl. 48.

3.E.3. in Fitz ti. corone. P. 332. et Prescription. P. 50.

3.E.3. in Fitz ti. corone. P. 327.

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ted for felonie & bekes the arest, so ý in the pursuyt of him he is killed because hee wouldе not otherwise be taken, the king in this case shal haue the yere, day and wast, as it appereth. 3. E. 3. If a man cõmit felonie and hathe his charter of pardon, yet the king shal haue the yeare, day & wast and the lordes theyr eschetes, & this appereth 3. E. 3. for the pardõ doth not restore him but to the lawe. For though the kinge would pardon him with words of restitucion, yet his grace could not therby restore him to the lãds holdẽ of other. And note ý the king shal haue the yere, day & wast of lãds in ancíet demesne if it so be ý the tenãt myght haue sold the said lands against the will of the lord, as it appereth. 3. E. 3. and that notwithstanding ý the sayd lands were alwayes vsed to be surrendred by ý rodde & to passe by surrẽder. The words of the statute be further Exceptis hominibus quorũ dã priuilegiatorũ inde p regẽ. That is as much to say except such as haue Bona et cattalla felonũ by the kynges graunte for a man can not prescribe to haue Bona et catalla felonũ, as appereth. 46. E. 3. 1. H. 7. 8. H. 4. nor none may haue this prerogatiue of yere, day & wast but only the kinge although hee would claime it by charter frõ the kinge or otherwise, as it appereth 3. E. 3. But when the king is seised of it he may cõmit it ouer, as appereth by Bracton in his sayd 2. boke. But if the land wherof the kinge should haue the yere, day and wast be vnder the yerely value of iii s. iiii. d it is vsed to bee remitted for the smallnesse and simplenesse of the thinge, as appereth. 3. E. 3. for it should cost more the suing of it out of the kinges handes than the thing is worth. And note the custõe of Gloc'. comprised in this statut, wherby it should appere that notwithstanding any such custome yet the king should haue annũ et dié but not so of lãds in Gauelkinde as I haue sayd before.

3. E. 3. in Fitz ti. Corone. P. 312. et 290 et 308.

3. E. 3. in Fitz ti. Corone. P. 310.

46. E. 3. f. 14. 1. H. 6 fo. 12. M. 8. H. 4. f. 1 Corone. 31.

3. E. 3. in Fitz ti. Corone. P. 327.

Proces to bee sued after the deathe of the kinges tenaunt in chiefe.

By a statute made in the 33 yeere of the late kinge of most famous memorie, H.8. the 22. chapter it is ordeined and prouided amõge other things, that no person or persons hauing lands or tenemẽts aboue the yerely value of fiue poundes shal haue or sue any liuerie before *inquisitiõ* or office found before ther chetour or other commissioner or commissioners by vertue of the kinges writ or commission too bee directed out of the kinges chaũcerie or other courtes hauing authoritie to mak suche writes or commissions for seinge of liueries, which writs or commissions shal not passe out of the chancerie nor any other courts but by a warrant or bill too bee assigned and subscribed with the handes and names of the master of the kinges wardes and liueries, surueiour of hisliueries, or the attourne and receiuor of the court of the wardes and liueries, or three, twoo, or one of them, to bee directed & deliuered to the chanceller of England or to any other chancelor or officer hauig power to awarde such writes: And if ẏ lands or tenements whereof any inquisition is to be had by vertue of any such writ or commission excede the yerely value of fiue poundes that then such as sue for such writes and commissions shal pay for the seale and writting ther of such fees as hath ben accustomed. And if ẏ sayd lãds & tenemẽts wherof any such inquisicions and offices ar to be found by vertue of any such writ or commission excede not thé sayde yerely value of vi pounde, thẽ such as shal sue for such writs or commissions shall paye for the seale of euery of them vi.d and for the writinge vi.d and not aboue. This statut doth

not

not set fourth the name of the writ or cõmissiõ that shalbee sued, howbeit these wordes that follow, that is to saye (for suinge of liueries) do somwhat open the minde of the makers of this statute, and declare that their meaninge was of the diem clausit and such other writs or cõmissions as serue for that purpose, and not of euery writ or cõmissiõ, for so might an office be found by a wrõg writ or cõmissiõ, which should want mater or be other wise insufficient to make liueries. But learne and enquire if after a good writ or cõmissiõ sued fourth, the office that is found is not sufficient, whether the partie shal haue his liuerī or not without suing a melius inquirendū, or a new office because that some parauenture will say ẏ the wordes of the statut be performed ẏ is to wite an office or inquisition is found. But to that it may be answered and sayd that ẏ it is no office when it is insufficient at least wise toward the partie that should sue liuerie thereupon, although it be a good office toward the kinge if any thing therin conteined be for his benefit. And learne also if the kinges tenant dye seised of landes in diuerse counties whether by force of this statut he shal cause an inquisitiõ or office to be foũd in euerī coũtie where ẏ lands lye, for so is it vsed to be done vpõ al general liueries, & he that sueth his generall liuerie otherwise missueth the same, and is a intruder vpon ẏ kigs possessiõ: howbeit peraũture you will say ẏ if the lãds excede ẏ yerely value of .xx. marks he must sue a specyal liuerie & not a general, & therfore it makes no mater for the inquisitiõ or office, & that the wordes of the statute will beare it wel enough if there be but one office foũd. But as to ẏ it may be sayd ẏ the meaning of ẏ statute was not so, for ẏ kinge can neuer be fully enformed of his title vnlesse ther be an office foũd in euery shere, & also by finding of seueral offices one record may be better for the kinge then an other, whereof his grace may take auãtage, for the best shal be takẽ for ẏ kinge. Thus it appereth by statut how that of

landes aboue the yereli value of .v. li. inquiſicio muſt be made and an office found after the death of the kinges tenant be fore liuerie can be had: and that muſt be by a writ of diē clauſit extremum, for that is the proper writ that is to be ſued for that purpoſe if any ſute be made within the yeare after the kinges tenants death, or a ſpecial commiſſion in the nature of the writ of diem clauſit. For vpon a general cōmiſſiō to enquire generally of all wards no perticular perſon can haue liuere. And if he tarry till after the yere, then he cānot purſue any of theſe, but for his remedie muſt ſue a writ called Mandamus or a commiſſion in nature of that writ, and therupon to cauſe an office to be foūd and ſo to haue liuerie: But if an office be once found by diem clauſit and the heier dieth in the kinges ward, his heir muſt ſue Deuenerunt & no Mandamus although it be after the yere of ẏ death of him that dyed in ward, and ſo is the rule in the regiſter. Sumetymes it happeneth ẏ after deliuerie of the writ or commiſſion and before office found the eſchetor dyeth or is remoued frō his office, in which caſe then ẏ prores ẏ is awarded to his ſucceſſor is a writ called Datur nobis intelligi, but if office be foūd before his death or remouing, which office is not retur ned then ſhall therbe a certiorari awarded to his executors to retourne the ſame. For it is a mater of record as ſone as ẏ iurors haue put their ſeales vnto it, notwithſtanding it be not returned. And note ẏ thawardig of this writ of diem clauſit or ſpecial cōmiſſiō is peremptorie to him ẏ ſueth for it. For if he leſe it or be taken frō him with force he gettes no moe writs or cōmiſſiōs for the lands in that coūtie and this appereth in the new Natura breuiū fo. 285, Howbeit in 14. E. 4. it is touched by the waye that in ſuch caſes he ſhould haue a new writ. idē quere. But after office ones foūd by a diē clauſit or ſpecyal commiſſiō as well the kinge & partie therby are boūd as euery other ſträger: for ſomuch lāds as are compriſed within the office, and neither the kinge ne ẏ par-

H. 14. E. 4. fo. 5.

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tle no? any other ſhal haue any moe writs o? cõmiſſiõs to en
quire any further of theſe lands, except it be in ſuch caſes as
hereafter recite, for ſo the lawe ſhoulde neuer haue
end, but newe heires might be founde euery daye by office
which were incõuenient and the king ſhould not knowe to
whõe to make liuerie, & this appereth. 14. E. 4. and 2. et 4. 14.E.4.f.5
H. 7. But where after office found it is ſurmiſed for ꝯ kinge 2.H.7.f.2.4.
that his highnes hath a better title than was found for him 4.H.7.f.13.
by the firſt office, whether ꝯ mater ſurmiſed may ſtand wt ꝯ
mater foũd by the firſt office o? not, yea although it be meze
cõtrariãt or repugnãt it is not material: But in ſuch caſes
a newe writ o? cõmiſſiõ ſhalbe awarded. As take the caſe to
bee this. By the firſt office it is found the kinges tenaunt
in chiefe dyed ſeiſed his heir wtin age where in dede hee dyed
without heir ſo ꝯ therby the lands ought to haue eſcheted to
the kinge, o? that he was tenãt in taile & dyed without iſſue
of his body, wherby the lands ought to haue reuerted vntoo
the kinge, in theſe caſes the court ſhal awarde a newe writ
o? cõmiſſiõ for the kinge. Like lawe is it where the daughter
is foũd heir by office & afterward ꝯ ſonne is borne, or where
ther is but one daughter found heire by office where there
ought to haue ben two foũd heires, o? if by ꝯ firſt office one
is foũd heire & of ful age which is not heir in dede, but an o-
ther is heir which is within age: In all theſe caſes there ſhal
be a newe writ o? cõmiſſiõ awarded Cauſa qua ſupra, as it 14.E.4.f.5
may appere. 14. E. 4. et 4. H. 7. 12. R. 2 et 30. li. aſſ. pea and a 4.H.7.f.13.
moze ſtrõger caſe as it ſhould appere in the new Natura bre
uium fo. 293. fo. 294. et f. 295. that is to ſay, where the kinge
was to haue no benefit at all moze then he had by the firſt
office, and yet a newe commiſſion was awarded, and
therfore the caſe was there, the ſecond brother was founde
heir by the firſt office & of ful age, now the eldeſt had a com-
miſſion being alſo of full age to finde him heir, and ther-
vpon had his ſuery. So is it where 2. be foũd daughters and
heirs to one mã of certain lãds where in dede parcel of the

ſayd

ſaid land was geuen to one of the ſaid.2.daughters in frãk mariage,now the that claimed the frank mariage had a ſpeyall cõmiſſion to enquire of the fãe:and yet by that ſeuerall office ỹ king had no benefit ideo quere. For this Natura breuiũ ſeemeth to impugne ỹ bokes before reherſed. And like as he may pray a newe writ or cõmiſſion in ỹ caſes aboue reherſed before liuerie had,euen ſo may he do in the like caſes after liuere had if the liuerie be a general liuerie,& therupõ as ſone as the title is found the king ſhal reſeiſe: but not wout a Scire facias becauſe the ſtatut made at Lincoln hath ſo prouided as I ſhall open more fully when I come too that place,and ỹ in all theſe aforeſayd caſes a new diem clauſit may be as wel awarded as a new cõmiſſion,as it appereth titulo Trauſer in Fitz.pl'.28.anno.29.li.Aſſ

¶ What thing ſhalbe in ỹ king without office or ſeaſure & what not,and where by an office only without any ſeaſure or other prootes the kinge ſhalbe in poſſeſſiõ and where not, and where he ſhalbe in poſſeſſion without an office but not before a ſeaſure,and how the kinge may be ẽtitled by any other recorde as well as by an office,and where a man may enter as well vpon the kynges poſſeſſion as any other.

By a ſtatute made the.33.yere of the late kinge of famous memorie H.8.the 20.chapter it is among other things prouided that if any perſon or perſons ſhalbe attainted of hye treſon by the courſe of the comon lawes or ſtatutes of this realme,that in euery ſuch caſe euery ſuche attainder by the comon law ſhalbe of as good ſtrength,value force and effect as if it had ben done by authorite of parliament

ment & ỳ the kinges matie shye, his heires and ſucceſſors ſhall haue as much benefit & auantage by ſuch attainder as well of ſuch rights, entres, condicions, as poſſeſſions, reuercions remainders and all other thinges, as if it had ben done and declared by autoritie of parliament: and ſhalbe demed and iudged in actuall and reall poſſeſſiō of the lands, tenemēts, hereditamēts, vſes, goods, cattals & all other thinges of the of fēdors ſo attainted which his highnes ought lawfullī to haue and which they ſo being attainted ought or might lawfullī loſe and forfait if the attainder had ben done by authorite of parliamēt without any office or inquiſition to be founde of the ſame, any law, ſtatut or vſe of the realme to the cōtrarye therof in anī wiſe notwſtādig. This ſtatut maks it clere & without queſtiō that in caſes of hye treſon the lāds of him that is attainted are in the kinge bandby without any office. But for other attainder it remaines as it was at the cō mō Law, and therfore lerne if one which holdeth of ỳ king be attainted of petit treſon or felonie, whether in this caſe by that attainder his lands be in the king without office, and me ſemeth by attaider and death together they ſhould be in the kinge in law, howbeit not in dede, vntil ſuche time his highnes ſeiſe then by his officer, or that an office be therof foūd, for by that attainder the lands are forfaited to the kinge by mater of record, and then when the partie dyeth either the freehold muſt be in ſuſpence, or els aiudged in the king in lawe, for he that was ſeiſed hath corrupted his blood and is dead without heir, and therfore his highnes is becomme owner therof in lawe, and a poſſeſſion in lawe veſted in him of the ſame landes, which his highnes at his will and pleaſure may make a poſſeſſiō in dede as ſone as he will take vpon him knowledge of the ſayd landes and ſeaſe them by his officer. And therfore the booke is agred 10.E.4. that if 20.E.4.fo.19.
he ỳ is attaynted be ſeiſed of auowſōs appendaūt, as ſōe as ỳ church becometh voide ỳ king may preſēt wout any office

which

which proues ỹ ỹ kinge by that tainder was patron before any office found or els how could his highnes present: and I see no differẽce betwene lãds & auoulõs in this case, for auoulson is not so transitorie toward the kinge, but ỹ he mai take the p̃sentment therof at all times whẽ he will, quia nullum tẽpus ei occurrit. Howbeit Ierne what the law will in this case, for many mẽ are of the contrarie opinion. And see the boke. 4. E. 4. cõcernig this mater. And so note what is sayd of a possession in law, for as I take it there may be a possession in law in the kinge as well as a possessiõ in dede, which possession in law is euer without office or any other mater of record, as whẽ the possessiõ is cast vpõ his highnes by a discẽt, reuerter, remainder or eschett or in title of his seignorie or prerogatiue, as for wardship, primer seisi or for the custodie of the tẽporalties of a bishop during the time ỹ the see is vacant, in all these cases without any office or other mater of record here is a possession in law vested in ỹ kings highnes, ỹ is to say, for ỹ that doth descẽd, reuert, remain or eschet, the freholde is cast vpon him in lawe as it should be vpon a comon person in the like case, or els ỹ freholde should be in suspense, which may not be, & of the rest the possession in law of a tattell is in his highnes in right of his seignorie, which his highnes at his will and pleasure may make a possession in dede by entre or seasure, but not to make it a possession in dede by his graunt, because there is a statute made in the 18. yeare of H. 6. ca. 6. to the let therof, which prouideth ỹ all letters patents made of lãds & tenements before office foũd and returned, or within one month after but only too him, that tendethe his trauerse shalbee voyde. This statute e rtdes onely to landes and tenementes, therfore of the bodie of his warde his highnes may make a graunt notwithstandinge this statute as me semeth, for that is neither lãd ne tenemẽt: also notwithstãdinge that this statute doth restraine the graunting of the lãds & tenemẽts, yet the

4. E. 4. 21.

seisin

ſeiſin thereof remaines and is in ỹ kinge as it was by order of ỹ comon lawe which is as I layd before in his highnes in lawe, although not in deede, vntil ſuch time as he hath made a ſeaſyn or an entree by his eſchetour, or a graunt therof, which wayethe both to a ſeaſure and a graunt, in ſuch caſes where the graunte maye bee goode and not reſtrained by ſtatute or vntill ſuch time an office therof be found: For an office that entitleth the kinge to the poſſeſſion is ſufficient by it ſelfe without any ſeiſer or entre of the eſchetour to make a poſſeſſion in deede in the kinge, if it be ſo that the poſſeſſion were vacant when the office was founde. But if the poſſeſſion were not vacāt, but an other thā he in whoſe right the kinge ſeiſeth was tenant therof at the time of the findinge of the office, then muſt the kinge entre or ſeſe by his officer before the poſſeſſion in deede ſhalbee iudged in him: yea and if his highnes ſeiſe not by the ſpace of a yeare and a daye after the findinge of the office, then maye he not ſeiſe without a Scire facias to bee purſued againſt him ỹ is tenāt therof. And of thoſe maters you may ſee bokes 29.H.7. f.27 H.7.49. E.3.20. et 21.E.4.4. E.2.10. H.4.21. H.7.29. et 32.li. aſſ. But heruppon is there a diſtinction to be made, whether that ỹ the king is ētitled vnto by office be a thinge manuell and wherof profit maye bee taken forthwith after the findinge of the office or not. For if it bee ſuch a thinge as is not manuel and wherof there is no profite too bee taken forthwith vntill ſuch time it falleth, in that caſe although the king be in poſſeſſion of the right of the thing, yet is he not in poſſeſſion of the profit therof vntill ſuch time as his highnes actually by his officer when it falleth taketh and perceiueth the ſaid profit, as for example. The thing ỹ king is entitled vnto by office is no land but an avoſon, rent or a comon, although that the kinge by this office be patron of thavouſon or owner of the rent or comon, and therby when the benefice becometh voide may preſent, or when ỹ rēt daye

49.E.3. f.22.
20.E.4.f.10.
Eſtopel.255.
Trauers. 50.
32.Aſſ.P. 32.
29.Aſſ.P.30.
21.H.7,f.7.
P.21.E.4 f.1
Gard.P. 105

cometh

cometh may receue the rent, or when the comõdity to be take may vse the saidcomõ, yet if the office that entitleth his highnes be false, and he that was in possession at time of the office take the profite when it falleth before the kinges officer do take it, in this case this takinge is no entrusyon vpon the kynges possessions, for he was neuer seysed in deede: wherefore being driuen to his accion if his highnes bringe his Quare impedit or action of trespas, the defendant maye trauerse the office with him in the said actions keping still his possession, and neede not too sue in the chancerie for the trauersing of the same. This maye you see a Differente betwene a thinge that is manuel and a thinge not manuel, and what the reason therof should bee learne, for as I. suppose the reason of it is no other but as I sayde before, ỳ when a straunger is tenant at time of the office findynge the office maketh no possession in deede in the kinge beefore an entrie or a seiser. And then when the kinges officer taketh not the profites when it falleth but suffreth him that was in possession to take it, then was the kinge neuer seised, but he still remaines in possession that was possessed at the time of the finding of the office vntill such time as seiser bee made for the kinge, which can not bee done at all times as it maye bee of land, but onely at such times as the profit therof is too bee take, that is to saye, when it fallethe, and that is nowe past for this time seynge it is allredy taken: and therfore the kynge in that case is driuen too his action. But quere whether his highnes may bee brought in possession in those cases by a clayme or not: And these cases maye you seee in ỳ bokes of. 17. E. 3. f. 10. 21. E. 4. f. 1. 5. E. 4. f. 3. et. 4 E. 3. Like law is it where an office is found which doth not entitle the kinge to the possession by entrie but onely by action, as where it is found that the kinges tenant for terme of life or yeres hath done wast, or being his tenant in fee simple hath ceased by ii. yeres, or made a feffemẽt by collusiõ contrarie to the statut of marlebrige, or such like. For it is a ge-

15. H. 7. f. 24. Quare Impedit P. 33

neral

neral rule that in al cases wher a comō person cannot ēter but is driuen to his action, there the kinge can not haue the possession but by like action, or elis by a Scire facias after office foūd in nature of ỹ actiō, for the office in ỹ case entitleth the kinge to no other thinge but onlye to the actiō, as appereth 21.H.7.f.19. But quere of a settmēt ỹ is foūd to be made by colusiō cōtrarie to ỹ statute 27.H.8.ca.<. for in ỹ case it semes his highnes may enter wout Scire facias because the said statute apointes no action to be sued in ỹ case. And note ỹ in al these cases before where ỹ kinge is driuen to his Scire facias or other actiō if the office be false, ỹ partie maye trauerse the office with ỹ king, keping still his possessiō whether it be in ỹ chancerie or in any other court, & nede not to sue any ouster le main if it be foūd for him, because he was neuer out of possessiō. The further let vs see in what cases ỹ king can not be ētitled but only by office or other mater of record, & in what cases he may, howbeit not to haue anye possessiō either in dede or in law vntil ỹ time there be a seasure made. And as to ỹ, note that in all cases where a comō person can not haue a possessiō neither in dede nor in law wout an entre, there ỹ kinge can not haue it wout an office or such like mater of record, as where ỹ king hath title to enter for a mortmain or for a cōditiō brokē, in this case ỹ king can haue no title vntill such time as ỹ sayd mortmain or cōditiō broken be foūd by office or by some other record, as it appereth 2.E.2, H.7. So it is in diuerse other cases concerning ỹ kinges prerogatiue as in ỹ case of Ideotes, of lunatikes which haue lāds or tenemēts, or when his highnes is to be ētitled for annū, die, et vastū of persōs attaited, or for an alienatiō wout licēce, or to seise ỹ temporalties of a bishop for a contēpt, in all those cases his title must be furst foūd by office or otherwise apere of record for these rights his highnes hath only as king. But if his highnes haue cause to seise the lāds of his widow that hath maried her self wout license his highnes maye seise, notwithstandinge there be no office foūde of her mariage, as it appereth in ỹ new Natura breuiū. f. 197

21.H.7.fo.19

2.H.7.in Fitzti. proc. P.10.

Learne

Learne what ſhould be the reaſon therof, more then in the caſe of alienacio before. Like law hath bene vſed where his highnes is to ſeſe lands of priors aliens within this realme ratione guerre, his highnes doth it without any office, for in bothe theſe caſes the kinges title is notorious enoughe although it appere not of record. But yet in thoſe caſes his highnes muſt ſeiſe eare he can haue anye intereſt in the lãds becauſe they bee penal toward the partie and of theſe caſes you ſhall finde bokes 49.E.3.f.17.21. E.3. fo.31.21. H.7 fo.7.14. H.4.fo.37.22. E.4. fo.43.et 17. E.3.fo.1.et 17. Other prerogatiues the kinge hath which extende onely to perſonal and tranſitorie thinges ad bona et catalla felonũ, wreke de mere, treſour troue, or the profites of landes of clerkes conuict of felonie, or of perſons outlawed in a perſonall action, to theſe thinges it ſemes the kinge is ẽtitled although there be no office or other mater of record found of them as it ſhould appere. 11.H.4.fo.39.21. H. 7. fo.7.et 27.li.aſſ. P.50

Gard.1. 40.Aſſ.P.36 And note that if the kinges title appere any way of record, it is as good as if it weare found by office. Therfore yf the kinges tenãt alien wout licence which alienation appereth by fine or other mater of record, in this caſe if ther bee an other record found that proueth the landes to be holden of ẏ kinge in capite vppõ theſe.ii.records together proces ſhalbe made againſt the partie by Scire facias to come and ſhewe why he ſhould not make a fine for the alienation. Like lawe it is where there is a record to proue that he that aliened is but tenant in taile of the kinges gift, and he pretendinge to be tenant in fee ſimple doth purchace a licence of alienacio and alienethe and after dyethe without iſſue, which deathe is founde by office but nothinge of his ſtate taile or lycence appeareth in ẏ ſayde office, yet vpon all theſe records laied together ẏ king ſhal haue a Scire facias againſt the alienee to ſhew why the land ſhould not be ſeiſed in to his handes

and

and his highneſſe aunſwered of the profites ſince the death of tenaunt in taile, for when hee was but tenaunt in tayle it appearethe that the lycence was pourchaſed vpon falſe ſuggeſtyon, and ſo voyde, and thenne the landes ought to reuerſe to the kynge beecauſe hys reuercion coulde not bee diſcontinued. And this maye yowe ſee 40.li.aſſ. Then laſte of all it is to bee ſeene whether the poſſeſſion may bee taken from the kynge bye entrye or not. And as to that, yf the kynges poſſeſſion bee by matter of recorde, noe perſone can diſſeiſe hym or take the poſſeſſion from hym, for lyke as the kynge maye not take by gyfte from anye perſone but by matter of recorde, noe more maye the poſſeſſion departe from hym but by matter of recorde, and therefore his highnes cã not haue aſſiſe of Electione firme ſiue cuſtodie, lyke as a common perſone maye: yea and thoughe the entrie bee not immedyatlye vppon hym but vppon his committee or fermer, yet it is noe diſſeiſin to his highneſſe, as it appearethe 4.H.7.folio.2. M.2. H. 4.M. 14.E.4.folio.2 & M.35. H.6.folio.1. Bye the whiche ſayde booke of 35. it alſo appearethe, that if the kynge or hys commyttee bee caſt oute of the warde hyppe of the landes that the remedy is in thys manner, that is to ſaye, vppon ſuggeſtion thereof made in the Chauncerye, there ſhalbee awarded a writte called Amoueas manum, and that vppon a certaine payne, whyche writte maye bee awarded onelye vppon this ſuggeſtion wythoute anye preſentmente or enquirie, and thys writte maye bee graunted to the committee as well beefore poſſeſſion hadde of the warde as after, for where the kynge was once poſſeſſed by office, and grauntes it ouer, yet this poſſeſſion ſtyll remaines, for the kynge abydeth ſtil gardeyne not wythſtandynge anye ſuch graunt: And therefore this writte of Amoueas ſub pena lythe for the graun tee or committee, although the graunt be abſque aliquo inde reddendo. And if vppon this writte of Amoueas the de-

40.li.aſſiſe. in Fit. ti. Garde P.r.

35.H.6.in. Fits. titulo. Suggeſtion. P.9.

fendant do not reſtore the thing, then ſhall goe out againſte him an attachement, vpon whiche writ the defendant maye appeare and ſhewe his title, whiche if it be founde againſte him he ſhall then make reſtitucion by iugement and paye a fyne and anſwere the meane iſſues & profites. Thus dothe it appeare that the king cannot be diſſeiſed or ejected if his highneſſe bee once ſeiſed by mater of recorde. Otherwyſe it is before his ſeiſin bee by mater of recorde, for if before office a ſtraunger entre by title or without title this is no intruſion vpon the kinges poſſeſſion, but in this caſe the heire may haue Aſſiſe of mortdaunceſter againſte the ſtraunger if hee will, whiche proues that by his entrie hee hath gotte bothe a freeholde and a fee ſimple. But as ſone as the office is founde and the eſchetoure entreth, this poſſeſſion of the ſtraunger whiche entred witheoute title is clerely vndone, and the freeholde and the fee ſimple reuerted in the heyre But if the entrie of the ſtraunger weare by title and after warde office is founde and the kynge ſeiſethe, whether then it bee ſo or noe, learne. And it ſhoulde ſeeme to bee all one, or els the kynges ſeiſure is not good, for howe can the kynge ſeiſe in another bodyes ryghte if the ryghte weare taken awaye before by an entrie: therefore it ſhoulde ſeeme eyther hys highneſſe hathe noe title in that caſe to ſeiſe, or els by his ſeiſure, the freeholde and the fee ſimple muſte reuert in the heire. But note that if the kynge wyll bye coloure of a recorde ſeyſe an other mannes lande, whiche recorde geeues him noe title in deede, notwythſtandynge anye ſuche ſeyſure, yet hee that hathe righte maye entre vppon the kynge, and bye his entrie reuertes agayn in him ſelfe bothe the freeholde and fee ſimple as where it is foūd the kynges tenaunte dyed ſeyſed but of an eſtate for terme of lyfe the reuerſion to an other and thys notwythſtandynge the kynge ſeiſethe, in this caſe if hee in the reuerſi-

on en-

on entre vppon the kynge this is a good entrie: and therefore the case was, hee made a feffement after his entrie and it was thonghte to be a good feffemēt. Like law is it where the kynge is entitled but onelye to the profites as vppon an vtlagarie in a parsonall action or vpon the conuiction of a clerke, in these cases if the partie entre and make a feffemēt or if a straunger that hathe title to entre do entre hee dyscharegeth the kynge of hys interest, and of these maters, you shal find bokes 8.H.4.f.16. 21.E.3.f.1.3H.7.10.E.3.27.all.H 15.9.H.6.f.20.f.21.H.7.f.7. Trauers. 12. Assise.156.

Enterpleder.

SOmetyme it happenethe that by two seuerall offices founde in one countie seuerall parsones be seuerallye founde heires to one man, wherebye forasmuche as the kinge is brought in doubt to whiche of them his highnesse maye make liuerie, they therefore make firste enterpled e, and when by enterpleder the pruitie of the bloode is tried betweene them, then his highnesse oughte to make the liuerye to him that is tryed to bee the nerte heire of him that dyed. As for an example, by one Diem clausit or speeyall commission in one countie one is founde heire to hym that dyed the kyngs tenant and of full age, and by an other Diem clausit or specialt commissiō in the same countie one other is founde heire also to hym that dyed and within age, in this case the heire that was firste founde shal haue a Scire facias in ỹ chauncerie against hym or her ỹ was last foūd heire to come & shew why liuerie should not be made vnto

hym that last dyed seised thereof, vppon whiche writte yf a *Scire feci* be returned and the partye defendaunt cometh not, or yf he come and confesse that he hymselfe is not heire then the plaintife in the *Scire facias* shal haue hys lyuerie, but if hee come and entitle hym by the seconde office, and trauerse the firste as hee nedes muste (for thenterpleder muste nedes reste vppon the firste office, and not vpon the second) then as thissue is founde, so shall hee or theye for whome it is founde, haue lyuerye. And this appearethe in the newe Natura breuium fo. 294. 36. E. 3. & 16. E. 4. folio. 4. Howebeit a great doubt ryseth in our bookes vppon thys mater whether thenterpleder shalbe fourthwithe after the seconde office founde or not vntill suche time as the heyre that is founde wythin age commethe to his age, and as it appeareth by the sayde boke of 36. Ed. 3. in this case, where one was first found of full age & after the other within age thenterpleader was fourthwithe, for it weare noe reason that hee that was ryghte heire and of full age shoulde bee delayed by the nonage of the other that is noe heire. And a straunger shalbee receaued to trauerse the office not withstandinge the heire that is founde by the office that is trauersed bee within age. And then it is noe reason that the heire in this case be in worse condicion then a straūger. But take it, by the first office one is found heire and wythin age, and by the seconde office an other is found heire, and of full age, whether in this case they shal enterplede or not, or whether thenterpleader shalbe before thage of the other: And surely it shoulde seeme by the groundes and rules declared before vpon the writ of Diem clausit extremum, that the seconde office in this last case is voide, because there ys noe better title founde for the king than was by the first, & then if it be voide, there can be no enterpleder. Howebeyt in the newe Natura breuium fo. 294. it appeareth to the contrarie

P. 36. E. 3. in Fits. titulo. Trauers P. 44.

trary hereof & that they ſhal enterplede in this caſe, and ỹ the ſeconde office is not voyde for there the heyres founde by bothe offices weare of full age. And yet that notwythſtan dynge theye enterpleaded. And ſo is.5. Edwarde the folwer- the where it is layde that if by one office the heire is founde within age, and by an other office an other is founde heire and of ful age, that in this caſe theye ſhall enterpleade but not before the childe come to his full age. And Townesende ſuſtice ſayeth in.1.H.7. that if by diuerſe offices ỹ.be ſeueral ly founde heires and within age, nowe the kynge ſhall kepe the landes tyll theire full age, and thenne theye ſhall enterpleade, and yf theye dye before enterpleder their heires within age, ſeueral Deuenerunt ſhalbe awarded ỹ is to ſay, for euerie heire one & by the ſame beyng foũd ſeuerally heyres to the aunceſter, theye ſhall enterpleade at theyre full age, like as the aunceſter ſhoulde haue doone if they hadde lyued, and yf the dyinge of anye of them weare wytheout iſſue and the other founde to bee his heire then is thenterpleder determined. Thus may ye ſee how bokes vary in this matter, and yet by the waye note this diffe- rence, that is to ſaye, where by the firſte office the heire is founde within age and were of full age, for by theſe bokes it ſhoulde ſeeme that if hee bee firſte founde within age, notwithſtandyng that by an other office an other is found heire and of full age, yet hee ſhall not enterplede with the other tyll he bee of age, contrarie it is yf the fyrſt be found of full age, and the nexte wythin age, and the reaſon may be for that the kynge is firſt ſeyſed of hym ỹ is wythyn age, wõ whom the lawe weyes more in preſumption to bee heire than the other, and thys tytle ys the beſte tytle that the kynge hathe, for it entytlethe hys highenеſſe to a greater benefite than dothe the ſeconde office, and thys ſecond was found vpon a cõmiſſion graunted more for the kings benefit thã for ỹ heries that ſhould be foũd by ỹ ſame T.5.E.4.f.5 Liuery.P.17

and therefore it weare reason that hee that is firſt founde heire haue more fauoure if anye fauoure bee to bee ſhewed thanne hee that was laſt founde heire, or at the leaſt for the kynges benefit that the matter be reſpited til the childe bee of age. Alſo the ſayde Juſtice Townesend sayde further, that if one bee founde heire in one countie & an other found heire in an other countie, yet they ſhall enterplede, whyche can not bee as me ſeemethe: for once wee haue a generall grounde that a man can not ſue a generall ſyuerie by parcelles but firſte he muſte cauſe an office to be founde in euerye ſheere where he haue landes, and when all the offices be returned, then to haue his ſyuerie and not beefore, then this caſe where one is founde heire in one ſheere and an other in an other ſheere, heare none of them bothe canne haue ſyuerye, beecauſe hee hathe noe office founde butte in one ſheere and not in the other: and thenne if there canne be noe liuerie there can be noe enterpleder, wherfore it ſhould
2.H.7.f.2. ſeme in ỳ caſe they cā not ēterplede. And here with agreeth
Trauers 49. the boke in.2.E.8. Henry the ſeuenth. So no enterpleder can bee but where there is an office thorough the whole found for euerye heire in euerye countie wheare the landes lye, but it is not allwaye requiſite that theare bee ſeuerall offices founde, for ſometimes vppon one office founde by it ſelf alone there maye bee an enterpleder, and that is wheare ỳ. bee founde heires by one enqueſte as two twynnes that is to ſay, two children borne at a burden. And it is to be noted that euerye enterpleder is to trye the priuitie of bloude onely, that is to ſay, which of theſe ỳ enterplede is next heyre to hym that laſt dyed ſeyſed, and not to trye theire rightes in the landes. And therfore if by one office one bee found heire of a general taile, and by an other office an other is founde heire to the ſame lande as of eſtate in ſpeyall taile, theye ſhall not enterpleade, as it appearethe in 21.H.7. fo 37. Alſo they muſt be both found heires to him that laſt dyed, and by whoſe

whose death the king dyd seise: for if one bee founde heire to hym that dyed seised and another is founde heire to the auncester that dyed seised nerte before the last dyinge seised, in this case they shall not enterplede, as it appearethe in H.2. H.6.f.5. Also theye shall not enterplede but wher both heirs claime by one selfe title of landes holden of the kinge, for yf the kings tenant dye seised of lands holden of other as well as of the kynge, and one is founde heire to al the landes and by an other office an other is founde heire onely to the landes holden of other, in this case theye shall not enterpleade, as it appeareth in.12.E.4.f.18. for he ý is found heire by the seconde office can not haue liuerie if thenterpleader weare found for him, because he is not found heire of all as is before remembred. And there fore if one be founde heyre virtute breuis. and an other is founde heire virtute officij, in this case they shall not enterpleade, beecause hee that is founde heire virtute officij, can not haue liuerie yf thenterpleader did passe wt̄ him: for ý nature of enterpleder is to haue liues for him with whom it is founde. And note that notwithstandyng an enterpleder is not to trie the righte in the land but onelye the priuitie of bloud; yet the issue tryed betweene them shalbee an estoppel afterwarde in an action vsed of the possession of the same auncester by whom theye claime, as in Assise of mortdauncester or coſinage, as it appeareth in.4. Edwarde the seconde. And note that as two or more shall enterplede that clayme as heires, euen so shall anye other that clayme not as heires, but by soome other tytle, if it bee so that theire title affirme the kinges possession, as take the case to bee this. Land holden in chiefe is alyened to diuerse persons at diuerse tymes, and thys founde bye office the kyng seiseth, & after cometh euery of ý alienees & praieth to make his fine & to be restored, now they shal first ēterplede & try which of their feffements oughte to take place ere any of thē getteth restitucō, as appereth in 43. li. all.

Estoppell P 255.

Trauers 25.

So it is if any of them come into the chauncery wytheout proces & confesse thalienacion, as it appeareth by the sayde bokes, for by the confessiō the king is entitled against him that confesseth as well as if it had beene founde by office.

Trauers.

TRauerse for goods was at ỹ cōmō law, but trauers for lands found by inquisition before the escheto⁹ is geuē by ỹ statut made in ỹ 34. yere of E. 3. ca. 14. which saieth in this wise. Item acē est q̄ la ou terres ou teñts sōt seisies en la maine le roy p office del eschetor cōteignōt q̄ le tenāt le roy ent fist alienaciō sās cōge le roy ouq̄ le tenāt le roy p seruice de chl'r moruſt ſſī des terres & teñts auātdits en sō demene cōe de fee et sō heire deins age et puis la cause ratifie en la chaūcerie et celuy qui terres sōt seisie veigne en la chācerie et voet trauerser loffice qui fuit primes pris p mādemt le roy, que les dites terres ne soyent my seisables soit a ceo reſceu & soit le proces maūdes en bank le roy a tryer et oustre faire droit. This statut extēds only to the offices take virtute breuis aut cōmissionis, & not to offices taken virtute officij. And also by this statut though ỹ trauerse were foūde for ỹ partie, yet might he not haue had iudgemēt til a proce dēdo ad iudiciū had ben awarded. And therfore was there an other statut made in the 36. yere of ỹ said king the. 13. cha. the tenor whereof is this, Pour les greuouſes complaintes queux le roy aū oye de son people de ses eschetoures, & de lour male port il voet & ordeigne del assent auauntdit, que terres seisies en sa maine par cause de garde, soyent saluement gardes sauns waſt ou destruction. Et que leschetoure neyt nulle fee de bois, veneson ne pessoūn, nauter riens mes respoigñ au roy des issues et profits annuels proueignaunts

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des dits terres ſans waſt,ou deſtruccio faire. Et ſil face auterment et de ceo ſoit attaint,ſoit reint a la volunte le roy,et rende al heire ſes damages au treble,a ſa proper ſuit,ſibien deins age come de pleine age, & eyent ſes amis tanq; il ſoyt deyns age la ſuite pur luy, reſpoignants al dit heire de ceo qui ſerra iſſint recouere. Et auxint dauters ſeiſies en la main le roy par enqueſt doffice pris deuaunt leſchetor teign meſm ceſt ordinaūce & penance deuers leſchetours. Et ſil eyt nul, hoe qui mette challenge ou claime as terres iſſint ſeiſies, qui Leſchetour maunde lenqueſt en la chancellary deins le mois apres les terres iſſint ſeiſies. Et que briefe luy ſoyte liuere de certifier la cauſe de ſa ſeiſine en la Chauncellarye,& illeoques ſoyt oyes ſaūs delaye de trauerſer loffice ou auterment monſtrer ſon droite & illeoques maunde deuaunt le roy affaire finall diſcuſſion ſauns attender auter maundement. Et en cas que aſcun veigne deuaunt le chaunceller & monſtre ſon droyte per quel demonſtraunce per bones euidences de ſon auncien droyte et bone tytle que le chaunceller per ſa bone diſcretion & aduis du counſayle ſil ſemble que il beſoygne auoire coūſayle,que il leſſe et baylle les terres iſſint en debate al tenaūnte rendaunt ent au roye le value ſi au roy appertient en maner come il et les auters chaunceller deuaunt luy oūt faits auant ces heurs des lours bons diſcretions iſſint que il face ſuerte que il ne ferra waſt ne deſtruccion, tanq; il ſoyt aiudge. Et que les dits eſchetours preignēt tielx enqueſts en les bons vill & per bons gents,& de ceo ouertment, & par endentures affaires enter les dits eſchetours et ceux des ēqſts come auter foits eſtoit ordeign per eſtatuts. Anno 24. E.3. Et ſi nul eſchetor face au cōtrary de ceſt ordinace ſuiſdit eit la priſon des.ii.ans,& ouſter ceo ſoit reint a la volūte le roy.

By the comon lawe beefore the making of theſe ſtatutes a man had no other remedy to auoid a falſe office but onelye his petition. Howbeit in 24. E.3. wylby ſaieth that if thoffice had bene found before cōmiſſioners or any other thanne theſchetor, the party ſhould haue had his trauerſe by thorder of the cōmon law. Parauenture he may be moued ſo to ſay bee- 24.E.3.f.4.

becauſe thoſe ſtatuts geue a trauerſe onely to offices & before eſchetors, making no mẽtion of any offices & before any cõmiſſioners. Alſo beefore theſe ſtatutes if after I uerie or Ouſter le maine ſued, there had beene a newe office found, whereby the king had ben entitled to reſeiſe, & thereuppon a Scire facias according to the ſtatut of Lincoln againſt the partie that had purſued the liuerie or Ouſter le maine to come & ſhew why the land ſhould not be reſeiſed, the partie in that Scire facias might haue trauerſed the office that was ſo newly founde, as I ſhal more plainly declare when I come to that place. Alſo Bab. ſayd in the ſchequer chamber before
Trauers 47. al the Iuſtices An. 8. H. 5. that theſe ſtatutes that geeue trauerſe are only to be vnderſtand where ỳ king is entitled to ỳ land but for a time, as for wardſhip, alienatiõ wout licẽs and ſuche like. But if his highnes bee entitled to ỳ fee ſimple or the freehold, there he ỳ is put out by the office ſhal not haue his trauerſe, but is put to his petition Tamen quere, for though the firſt ſtatut be this as Bab. hath ſayd, yet the ſecond is not, but is generál, & therfore may bee extended to
Traners 37. al offices what mater ſoeuer they conteyn, as appereth H. 9 R. 2. wher it was found ỳ one had encroched vpon the kynges demeines which office in dede was falſe for that ỳ the thing ſuppoſed to be encroched was parcel of his manor that was ſo preſeted & no part of the kings demeſnes: in this caſe ỳ partie being put out of that parcel of grounde by theſchetor was receiued to trauerſe the office, & yet thoffice entitled the king to the fee ſimple. Alſo thoſe ſtatutes ſeeme not to geue trauerſe but to him that is put out of poſſeſſion by the office. But the ſtatut of 8. H. 6. ca. 16. alowethe any trauerſe pfred by him that feeleth himſelfe greued by any ſuch enqueſt although he be not put out of poſſeſſion by theſchetor. And ỳ ſtatut ſemes alſo to allow trauers of an office taken aſwell before cõmiſſioners as before the eſchetor. Yowbeit ỳ ſtatut geueth no trauers but onely maketh therof a reherſal.

Theſe

These statuts that geue the trauerse seme to office it generally to any man that wil desire it or that doth put challenge or claime to the lands wherof he is put out by any office. Howbeit ye exposition hath ben otherwise that is to say, that his challenge or claime must be such as the law will admyt & allow, for euery man can not trauerse that would or that maketh his challenge or claime: for these statutes are intended wher the king is entitled by office onely, for if his highnes be entitled by an other recorde beside the office and entitled as it were by a double mater of record, the partye shal neuer haue his trauerse. As take the case to be this, a man is attainted of treson by act of parlement or otherwise by verdit, and after warde it is found by office that the said person attainted was seised day of the treason cõmitted of certaine lands which in dede were neuer his lãds but mine, in thys case if I be put out of my lãd by this office I can not trauers it Causa qua supra, and yet I am a straunger to this record, as appereth in 46.E.3,10.H.6.f.4.E.4. But if there be noe such recorde of attainder I shalbe receiued well ynough to trauers the office alleginge first to enure mee to a trauerse that there is no such recorde of attainder as appeareth in.4 H.7. Also he that is founde heire by office shal not trauerse the same office that so findeth hym heire yf that part of thoffice that concernes the tenure in chiefe bee true, although the reste of the office bee false: and therefore if the kynges tenaunt dye seised his heire being of full age, & by a false office the heire is founde within age, in this case, hee can not trauerse thys office as appearethe E.5.E.4. And the reason of it is beecause the heire can not falsifie thoffice that hee himselfe is to affyrme by his liuerie whenne hee shall sue it. For thoughe hee woulde cause an other office to bee found according to the trouthe of the mater, yet it were not to the purpose to help him, for ye best office shalbe take euermore for ye king, that is to say, that that geues his highnesse

46.E.3.f.17. 10.H.6.f.15. 4.E.4.f.27. 4.H.7.f.6. 5.E.4.f.4. et.5.

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moſt auantage & the heire driuen to ſue his liuerie vpō that office onely, for ſeing the king is bound by an office as wel as is the heire, it is reaſon if any be better for him thā other that he be bound to that onelie, & not to the other, & the laiwe preſumes the one office to be as true as the other vntil ſuch time a tryall thereof be made, which triall cannot be by the heire for hee is bounden as I ſayde beefore by the office that is found without any further choiſe hauing no prerogatiue in ſuch mater, and if he ſhoulde be receaued to his trauerſe in this caſe, then vpon the trauerſe founde for him he ſhould haue the lands out of the kings hands by an Ouſter le mayn without any liuerie ſuing, as lands that the king ought to haue ſeiſed, which were incōueniēt. For euery way ẏ king ought to haue ſeiſed thoſe lands againſt any ẏ claimeth to be heire vntil ſuch time as liuere be ſued therof. Like law it is where the kings tenant dieth ſeiſed of land in diuers coū ties his heire being of full age, & in one coūtie the ſame heir is founden wīn age & in an other countie he is foundē of ful age, in this caſe the heire ſhal not trauerſe thoffice that foūd him within age Cauſa qua ſupra: for then for the landes in one coūtie he ſhould haue thē out of the kings hands wōute
Trauers. 39. any office or liuery ſuing. And this caſe appereth in. 32. H. 6. But if an office find ẏ my father held his lands of the king in chiefe by knights ſeruice wherin dede he held not of him in chief, in this caſe I ſhalbe reteined to trauerſe this office. For if I ſhould ſue my liuerie vpon the ſōne I ſhould be cō cluded euermore after to ſay, but ẏ the lands were holdē in chief of the king, & for ẏ cauſe I ſhalbe receaued to my tra uerſe as euery ſtraūger ſhalbee in the like caſe: for if my tra uerſe be true thē cā ẏ king haue no cauſe to ſeiſe thoſe lāds, & therfore not like the caſes beefore remēbred, as appereth 39. H. 7. The wordes of theſe ſtatuts be ẏ the whole lāds be ſei
Liuery. P, 10 ſed ſhal trauerſe or he ẏ putteth challeng or claime to ẏ lād ſo ſeiſed. Theſe wordes be not ſo geñaly vnderſtād as they be ſpoken, for

for moſt men vnderſtande them that hee will challenge or claime but a terme of yeares onely ſhal not bee receiued to his trauerſe where the kinge is entitled to the freeholde by thoffice, as where it is founde that the kings tenant is ſeiſed of certane landes and is dead without heire wherby the lãdes ought to eſcheate to the kynge, cometh one and ſayethe that hee is tenaunt for terme of yeares of theſe lands of the demiſe of a ſtraunger, without that that he that is ſuppoſed to bee the kinges tenaunt was euer ſeyſed of theſe landes, this trauerſe lyeth not in his mouth: for he that hath but a chatell ſhall not be receiued in anye caſe to falſifie the record that geueth any man intereſt in the freehold although he be a ſtraunger to that record. Contrarie lawe is it of him that hathe a freeholde or inheritaunce in the lande, for they ſhall trauerſe the recorde in ſuche caſe. Lyke lawe is it where the kynge is entitled but to the wardeſhyppe of the heire of his tenaũt hee that is fermer of the demiſe of a ſtraũger ſhal not trauerſe hys office althoughe the king be not entitled thereby to anye freeholde, for it was not the minde of the makers of theſe ſtatutes to helpe them that clayme: but chatels which are accompted in law as nothing, becauſe they periſhe and abide not. Et de minimis non curat lex. Howbeit learne what the law wil in theſe caſes, for I haue ſeene noe bookes of them. The lorde in title of wardeſhyppe ſhal trauerſe the office, and yet hee claymethe but a terme of yeares in the lande, as where it is founde by office that ſuch a one helde lands of the king in chief and dyed his heire within age where in deede he holdeth no ſuche lande of the kynge but onelye of mee by knightes ſeruice, in this caſe, I that am lorde ſhall trauerſe this office, that is to ſaye, ſhewe howe theye bee holden of mee by knightes ſeruyce without that they be holden of the king, as appereth in 1. H. 7. For ther it toucheth the lords inheritance in the righte of hys Trauers. 20.

his ſeignory ſ becauſe he by ẏ falſe office is to loſe ẏ profit ẏ is preſently fallen by reaſon of his ſeignorie, it is reaſon he be receaued to trauerſe the office. But if hee were but lord in ſocage he ſhoulde not be receiued to his trauerſe, becauſe he therby can make no title to the warðſhippe of the body, and landes of the childe, for it is a good generall grounde if the kynge be once ſeiſed, his highnes ſhall reteine againſt all other that haue noe title, notwithſtandinge it be found alſo that the kynge had no title but that the other had poſſeſſion before him, as appeareth in .37. lib aſſ. where it was found that neither the kinge nor the partie had title, and yet adiudged that the kynge ſhoulde reteine, for thoffice that fyndes the kyng to haue a right or title to entre, makes euer the king a good title allthough it bee falſe, and his highnes therby maye take poſſeſſion againſt any other that is ſeiſed of the landes, and reteyne vntill ſuch time as thoffice be trauerſed by him that hath title and tried to bee a falſe offyce. And therfore no man ſhal trauerſe thoffice vnleſſe he make him ſelfe a title. And if hee can not proue his title to be true allthoughe he be able to proue his trauerſe to bee true, yet this trauerſe wil not ſerue him. As for an exãple, it is found the kyngs tenaunt died ſeiſed of certayn lands that he held of the kynge in chiefe, his heire beeinge within age where in dede he had made a feffement in his life time to an other of thoſe landes, it is no trauerſe for the feffee to ſay he dyed not ſeiſed, but he muſt firſt make him ſelfe a title by the feffament, and for aſmuch as it is founde that the landes are holden in chiefe, if he wyl make his title good againſte ẏ kyng he muſt ſhewe fourth a lycence of alienation or a diſpenſation therof, or els hee muſte trauerſe the tenure in chiefe as well as he ſhall doe the reſt of thoffice, otherwiſe his tytle is not good, as it appeareth in .36. H.3.3. H.4.6. H.5.3. H7.f.14. Howbeit Huſſey holdeth opinió that not mã may

37. lib. aſſ, P 35.

Trauers P. 44. et. 46. Liuerie P. 18

trauerſe

trauerſe the tenure but the lord or the heire vnleſſe his title be found by office, but whether the lawe be ſo or not learn, for as I take it the lorde and euery ſtraunger ỳ hath a tytle againſte the kynge, makinge his title ſhall trauerſe the office before his title be found by office: for when the trauerſe is found for the partie his title nowe appeareth of recorde, and by the trauerſe found, the office which was the kings title is vtterly deſtroyed & gone, ſo that now the king is not to make any liuerie of the lands to any perſon but onely to auoue his hands from the ſame, with the meane iſſues and profites as one ỳ had no cauſe to ſeiſe them. And therefore euery man may enter now that will if he haue right or title of entrie to the lands, for the king deliuereth them to no perſon certaine but onely ryddes his own hands of them as he that had neuer ſeiſed thē, but otherwiſe it is where the king is to make liuerie, for there his highnes muſt bee enformed certainly by mater of recorde who ſhalbe his tenāt & whoe it is that ought to receiue the liuerie at his handes leaſt his highnes be deceiued in thadmitting of his tenant which ỳ & ought to be a great mater towarde the lord, & therfore the caſes be not lyke, wherfore I think a man may trauerſe by force of theſe ſtatutes without hauing their title firſt found by office: & ſo be our bokes. 36. H. 3. 2. E. 4. f. 10. 16. E. 4. f. 4. & 43. li. all. Yet. 20. Howbeit 5. E. 4. fo. 5. ſeemes to weye to the cōtrarie hereof, & 12. H. 6. alſo, where it is ſayde that if it bee found that the kings tenāt died ſeiſed wher in dede he was iointly enfeffed wō me, now can I not trauerſe this office except an other office were founde for me. But contrarie lawe ſhould it be if it had ben foūd by ỳ office iointenant wō hym for term of life wher in dede I was iointenaunt with him in fee ſimple, in this caſe I may traūſe the office, becauſe motiō is made of me in ỳ ſayd office, this boke caſe admitted to be law, yet it varieth frō ỳ caſe before remēbred of ỳ ſtrāger

Trauers. 44.

that

that trauerſed thoffice, for here thoffice is true, and when it is found by office that he died ſeiſed, this maye be allthough the ſaide dying ſeiſed were iointlye with an other for any thynge that is erpreſſelye founde to the certaintie, and then the king here is to admit an other tenant, as in the caſe of ỳ liuerie before of whome as yet he hath no credible infor̃ation, that is to ſaye, by mater of recorde and then it is lyke to the caſes of tenant by the curteſie, tenant in dower, and the deuiſee which in no wiſe can be admitted to their eſtats vnleſſe mention be made of them in the office or ſome other office or mater of recorde found for them, as appeareth in 46. E. 3. & M. H. 8. and for none other reaſõ as I gather it but onely for that thoffice is trus, & they are to be admytted the kings tenants which can not be but by infor̃acion by mater of recorde, vt ſupra. Then let vs reſorte to the place we were at before: that is to ſay, no man may trauerſe with the king vnleſſe he make himſelfe a good perfecte title, as to ſay that the tenaunt whiche is ſuppoſed to dye ſeiſed did enfeffe hym, or that a ſtraunger was ſeiſed and did enfeff him without that that hee dyed ſeiſed. And ſo note by the waye that he may conuey hys title aſwel frõ a ſtraunger as from hym that is ſuppoſed to dye the kynges tenaunt, as appeareth in. 36. Ed. the thirde, and when he hath made thus his title, then he muſt trauerſe the kings title which is thoffice, for it is not ynoughe for him to reſt vppon his owne title al thoughe it be neuer ſo ſtrong without aunſwerynge the kinges title, yea although it were good againſte a comon per ſõ, yet againſt the king it is not ſo wõut trauerſing ỳ office. And therfore if he will ſay ỳ the tenãt in his life time did leaue a fyne vnto him of theſe lands, Sur conuſaunce de droit come ceo quil ad de ſon done, by vertue wherof he was ſeiſed vntil ſuch time as he was put out by this office & praieth reſtitutiõ, this is no ple againſt ỳ king, & yet this mater were a good plee in aſſiſe of Mordaũceſter brought by ỳ heire,

9. H. 7. fo. 24 Brief. 618.

Trauers 44.

for

for in that caſe he ſhoulde be ſtopped by this fine, whiche is executed to ſay the contrarie therof, that is to ſay, that his father dyed ſeiſed without ſhewing howe his father gotte the poſſeſſion againe ſins the time of the fine leuied. But yt ys no plee againſt the kinge, for the kinge can not bee eſtopped namely in this caſe beeinge a ſtraunger to the recorde. And alſo the ſtatut geues a trauerſe and by this maner of pleadynge he takethe no trauerſe. Lyke law it is if it be founde by office that the kyngs tenaunt in chiefe enfeffed one B. without lycence, comes one D. and ſayeth that he dyed ſeyſed, and his heire entred and enfeffed him by the kynges lycence, this is noe plee without trauerſing the feffemēt made to B. and yet againſt any comon perſone. it were a good plee but not againſt the king, for his title muſt bee aunſwered fully: and that is the feffemēt, & theſe caſes appeare 46. E. 3. 43. li. aſſ. pl. 25. Alſo it is not ſufficiēt to trauerſe one of ỹ kynges titles but he muſt trauerſe them all, for though the kings title that he is ſeiſed by, be found not good, yet if ther be any other record that makes the kinge a title wherby he may retayne the landes, the partye muſt auoide alſo that title or els he gettes no Ouſter le mayne, but learne if ther be no ſuche recorde in Eſſe or beinge at the time of the trauerſe tended, & hanging ỹ plee vpon the trauerſe a new recorde ỹ ſi to ſay, an office is found which entitleth the kyng, whether in this caſe ỹ ptie ſhalbe driuē to trauerſe this office or not: ere he haue his Ouſter le maine. And it ſemeth he ſhal not: for ſo he might be delayd of hys poſſeſſion infinitlye by finding one office after an other, wherfore this office found hangyng the trauerſe ſhallbe accompted in law as though it had bene founde after the partye had hadde his Ouſter le maine, in which caſe then the partye vpon the firſt trauers founde for hym ſhalbe reſtored to his poſſeſſion by an Ouſter le maine, and then after vpō a Scire facias ſued againſt

p. 46. E. 3 in Fits. titulo Trauers. P. 17.

him to shewe why these landes shoulde not bee reseised, vpon this newe office found for the king, he shalbe receiued in that Scire facias to trauerse this newe office. Howbeit this auantage he winnes hereby, that is to say he the trauerseth with the king keping still his possession, where else he should trauerse being still out of possession. And this case
T 11 H 4.78 ye may finde. 11. et 19. 13. H. 4. Thus may ye see when a mã trauerseth with the king, he must trauerse all the kings tytles that haue then their being by matter of recorde, and is not bounden any further to answer for that tyme. Then let vs see howe the kinge shall replye vntoo this trauerse: and in that it is to bee noted that the kinge hath a prerogatiue that a common person hathe not, for his highnes maye chose whether hee will maintaine thoffice or trauerse the tytle of the partie, and so takes trauerse vppon trauerse, or when all his tytles bee trauersed his highnes maye choose to mainteine them all or else but one of them. But then note that if hee mainteine but one, that is to saie, take issue but vppon one whiche is founde with him that tended the trauerse, in this case the partie shall haue his ouster le main notwithstanding there bee no issues taken vppon the other titles, but whether the kinge shall euer take auauntage of thothere titles after or not this is to be sene: and I thinke hee shoulde, for though the other titles shall not in this case let the partie of his Ouster le mayne, yet it seemes the kinge maye call the partie againe by a Scire facias to answere his other titles, or else his highnes to reseise as I saide beefore, for no nient dedire tẽ prejudice the kinge nec tanta remuneratio, like as it may doe a comon person. And therfore seeinge hee did not renounce his other titles openlye nor expressely, it seemeth his highnes by his prerogatiue shall haue aduauntage of them at anye other tyme when it shalbee his pleasure. And these cases ye maye see. 13. Ed. 4.
Trauers. 15 fo. 8, 9. Hen. 4. et 4. H. 7. f. 4. Howbeit it appeareth in the

saide

ſaide booke of.13.E.4.that after the kinge ioineth an yſſue vppon a trauerſe, his highnes cannot in an other tearme wayue this iſſue and take a newe, for ſo the partie might bee delayed infinitely of his right, whiche ſhoulde bee as it were a wronge committed vnto the partie, and the kynge by his prerogatiue maye doe no manne wronge: but after iſſue ioyned hee maye demurre in lawe, and waiue thiſſue for there is noe matter chaunged but the olde remaineth And by the demurrer the lawe preſumeth that thiſſue was miſioined and ſo myght bee a trofaile, and therefore his highnes maye demurre in lawe after iſſue, but not change his iſſue and take a newe. And note that if the partie take a trauers whiche is iudged inſufficient in the lawe, thys is peremptorie vnto him, & he ſhall not bee receiued after to take a newe, as it appeareth.40.lib.Aſſ. Howbeit.14.E 4.fo.1.the contrarie oppinion is holden, and that it is not peremptorie, becauſe it proceedeth in the Chauncerie which is the court of conſcience. But as to that a manne maye anſwere and ſaie that a Chauncellor hathe two powers, the one abſolute the other ordinarie, and this trauerſe is before him by an ordinarie power, in whiche caſe all thinges touchinge the ſame muſt proceede as it ſhoulde before anye other ordinarie iudge of the common lawe, and therefore it ſhoulde appeare by a booke in.4.H.6.fo.12.et 22.Edward 4.fo.9.that if the partie be nonſuit in this trauerſe it is peremptorie vnto him, for ſo might hee delate the kinge infinitely, tamen quere, and learne whether one maye proceede with a trauerſe the heire beeinge within age or elſe ſhall tarrye till hee bee of full age for the booke is in 5. Edwarde 4.that hee ſhall tarrie till the heire cometh to age. But in this queſtion one may make this diſtinction, that is to ſaye Whether ỹ trauers be tẽded by a ſtrãger or by ỹ heir, for ſõ tymes it happeneth ỹ ỹ heyr ſhal traũs as wel as a ſtrãger.

Trauers. 24.

Trauers, 12.

T.5.E.4. f.5

For no more then a ſtraunger can haue ouſter le maine wt
out trauerſinge all the kinges titles, no more may the heir
haue liuerie wythout trauerſinge all his tytles, and then
if the trauerſe bee to bee taken by the heire, hee ſhall not be
thereunto admytted vntill hee bee of age, becauſe that bee-
fore that time he hath no cauſe to haue his liuerie. But that
reaſon ſerues not where the trauerſe is to bee taken by a
ſtraunger, and therefore it ſhould ſeeme that hee ſhoulde
haue it by and by: For hee hathe cauſe to haue an ouſter le
maine forthwith, and that with the meane iſſues and pro-
fites, and therefore it were no reaſon that the nonage of a
thirde perſon ſhoulde hinder him with whome hee is not
to plede or to trye anye right but onelye with the kynge.
For if the childe haue right, hee may enter vpon the ſtran-
ger after hee hath his ouſter le maine and trye hys righte
with him: and ſo at no miſchiefe. And note as I ſaide be-
fore that the heire muſt trauerſe all the kinges titles ere
hee can haue liuerie, and that whether the kinges tytle be
in his owne right or in the right of an other, in his owne
right, as if there bee a recorde that proues this lande to be
alienedwythout the kings lycence or that thaunceſtour of
thenfaunt that woulde ſue his liuerie was but tenaunt for
terme of lyfe, the reuerſion to the kynge and hathe made a
feffement to the kinges diſheritance or ſuche lyke, in theſe
caſes notwithſtandinge the kinge did not ſeiſe by vertue
of theſe recordes but onelye by vertue of thoffice whyche
founde thaunceſtour of thinfaunt dyed ſeiſed the kynges
tenaunt in chiefe of eſtate in fee ſimple, yet the heire geat-
teth no generall liuerie vppon that office vntill ſuche time
as hee hath auoided theſe other recordes And if hee haue it
before: it is a cauſe of reſeiſer. So it is where the kynges ti-
tle is in righte of anye other, as if one bee founde heire by
office, and after by another office an other is founde heire

of

of the same landes to the selfe same auncestour, in this case he that was first found heire cannot haue his generall liuerie vntill suche time as hee hathe destroied the other title either by an enterpleder or a trauerse, for if it so come to passe that he cannot enterplede, then must hee trauerse or by some other meanes auoide the recorde ere hee can haue his saide generall liueries, and if he sue his generall liuerie otherwise, it is then misused, and a good cause geeuen to the king to reseise. And this enterpleder or trauerse betwene them that claime as heirs is by the order of the common lawe and not by statute, and can neuer be, but where both theire titles bee founde first by office, and the reason is, because that as sone as the matter is discussed betweene them, hee for whome it is founde shall forthwith haue hys generall liuerie, which he can neuer haue if his title bee not first founde by office: and therefore not like the case where a straunger trauerseth with the kinge that is to haue but an ouster le maine, for there the kinge hadde no right too seise, and therefore his tytle nede not to bee found by office as I haue saide before. But in the other case who so euer shall claime the lande as heire, his highnes hath right to seise in the right of the saide heire, and to haue his primer seisine or wardshippe as the case dothe require. And therefore his title must bee first founde by office: but where one heire is to trauerse with an other heire duringe the kinges possession, this shall not bee vntill hee that is first founde heire by thoffice come of age, because vntil that tyme, the landes ought to remaine in the kinges handes and then hee to haue liuerie: but whether hee that was firste founde heire shoulde tarrye for thage of him that was laste founde heire I haue said my mynde therin before in ỳ tytle of Enterpleder. But where a straunger is to trauerse, hee shall

not tarrye for thage of the heire for the cauſes before remē-
bred. And ſo there appeareth to bee a great difference bee-
twene a trauerſe taken by him that is a ſtraunger, and by
him that is heire. But at this daye molte liueries that bee
ſued are ſpeyall liueries, whiche conteine in them ſelues
a pardone, and therefore the myſſuinge of them is diſpen-
ſed withall by the wordes of the pardone conteined in the
ſaide liuerie. And ſo manye of theſe thinges that I haue
ſpoken of before are not much to bee obſerued if the liuerie
or Ouſterle maine bee not generall. For I ſee no lett but
that an ouſterle maine maye be graunted ſpecially as well
as a liuerie. And laſte of all it is to bee noted that this tra-
uerſe extendes not to euerie recorde that entitleth the king,
but onelye to ſuche recordes as bee trauerſable, as an office
or ſuche like, as I ſhall ſhewe my mynde therein more ful-
lye in the chapter of Petition. Other trauerſes there bee
whiche bee trauerſes by order of the common lawe. And
not by any ſtatute, as trauerſes vppon enditements or pre-
ſentmentes, whereof I entend not to entreat in this place,
amonge whiche trauerſes there is alſo by order of the com
mon lawe a trauerſe concerninge goodes and cattalles of
perſons attainted, for the whiche a manne ſhall trauerſe
with the kinge althoughe his title thereunto bee by double
matter of recorde. As take the caſe to bee, a manne is attain
ted of treaſon or felonye or outlawed in a perſonel accion
and after by office it is founde that hee was poſſeſſed of a
horſe or anye other goodes as his owne proper cattell
where in deede they bee the goodes of a ſtraunger, in thys
caſe the ſaide ſtraunger ſhall trauerſe this office with the
kinge. So is it if it bee founde by office that a manne out-
lawed in a perſonall accion is ſeiſed of certeine lāds which
in deede are my landes, and the ſchetour by force of that fals
office takes the profites, in this caſe I maye diſturbe hym

without

without trauerſinge thoffice. And thoſe caſes appeare. 4. Edwarde. 4. fo. 21. 13. Edward. 4. fo. 18. T. 9. H. 6. fo. 20. & H. 47. E. 3. fo. 29. Then further, The woordes of the ſaide ſtatute of anno 36. bee, that if anye came before the Chancelier and ſhewe his right, whereby it may appere by good euidence that hee hathe an auncient righte and good tytle, then the chaunceller ſhall let the ſaide landes to the partye that tenderth the trauerſe yeldinge to the kinge the value if it bee aludged for the king in maner as hee and the other Chauncellier haue done before him by theire good diſcretions, ſo that hee to whome it ſhalbee letten finde ſurettie to doe no waſte or deſtruccion beefore the trauers bee diſcuſſed. By the woordes of this ſtatute it ſhoulde appeare that the Chauncellours before this time by theire diſcretions hadde vſed to let the landes to the partie to ferme, and that is true, for the kinge vſed ſo to doe vppon a petition whiche was made to his highnes by the order of the common lawe in ſteede of a trauerſe nowe vſed, as appeareth 5. Edward 3. and therefore I thinke his highnes may do ſo at this day bothe vppon a petition and a Monſtrance de droit, although the ſtatute make no mencion thereof, for ſo it was vſed to doe by order of the common lawe, as it appeareth by the booke before. And of this matter ſee the bocke. 3. Henrye. 7. Now is this ſtatut amplified and made plainer in thys point by the ſtatute made in the. 8. yeare Henrie. 8. the. 26. chapter, whiche will that no landes or tenementes ſeyſed into the kinges handes vppon enquell taken before eſchetours or commiſſioners bee in anye wiſe graunted or letten to ferme by the Chaunceller or Treſorer of Englande or anye other the kinges officers, till the ſaide enquelles or verdites bee retourned fullye into the Chauncerie or the exchequer, but all that time ſhall abide in the kinges handes and by a moneth after the ſaide retourne, if it bee not ſo that hee or they that feele themſelues greeued by the

Quare impedit p. 34.

Trauers, 12.

ſaide enqueſt or that are put out of theire landes and tene-mentes come into the chaunterie and offer to trauerſe the ſaide enqueſtes and to take the ſaide lande or tenementes to ferme, whiche if they doe then the ſaide Chaunceilour, Treſorer, or other officer ſhal let them haue them to ferme ſhewinge good euidence, prouing theire trauerſe to be true accordinge to the forme of the ſtatute of an. 36. E. 3. to holde till the iſſue vppon the ſaide trauerſe taken bee founde and diſcuſſed for the kinge or elles for the partie, and alſo fyndynge ſufficient ſuertie too purſue the ſaide Trauers with effecte, and to render to the kinge the yearely value of the tenementes whereof the trauerſe ſhalbee ſo taken, if it bee diſcuſſed for the kinge. And if anye Letters patentes of anye landes or tenementes bee made to anye other parſon to the contrarie, then the ſame to be void after the moneth. Hereuppon is to bee noted that the ſhewinge of the euydence is onelye reherſed to the lettynge of the landes to ferme & not to the trauerſe, For by this ſtatute hee maye trauerſe without ſhewinge anye euydence, but not haue the landes to ferme. Alſo by theſe Statutes hee is not bounde to noe certeine tyme for takinge of hys trauers, but onelye for takinge of the landes to ferme, for hee maye tende hys trauerſe when hee will ſo hee deſire not the ferme of ꝑ lands, But if hee will haue them to ferme hee muſt tend his trauers within the moneth, as appeareth. H. 13. E. 4. fo. 8. and nowe by the ſtatute of anno. 1. H. 8. ca. 9. hee hath three monethes libertie to doe it. Alſo note the thinges that he muſt fynde ſuertie for, that is to ſay, to ſue with effecte, to paye the rent after the trauers bee diſcuſſed, and to doe no waſte or deſtruccion. In this woorde rent is emplyed all the arrerages of the rent that ſhall encurre meane betweene the takynge of the ferme and the diſcuſſinge of the trauerſe and yet it is not ſo expreſſed. Alſo the leaſe that is made to hym

that

that tendes the trauerſe is not of anye terme certeine, but onelye by theſe wooꝛdes Donec diſcuſſum fuerit, foꝛ the wooꝛdes of the ſtatute bee ſo, and therefoꝛe as ſoone as the trauerſe is founde againſte him that tendeth it by and by the leaſe hee hadde in the landes by foꝛce of the Statute is voide, as appearethe in.4.Edwarde the.4.folio.29. wythout anye further pꝛoces: Howbeit foꝛaſmuche as the wooꝛdes bee to holde till the iſſue vppon the ſaide trauers taken bee founde and diſcuſſed, foꝛ the kinge oꝛ foꝛ the partie, I woulde learne if the partye bee nonſute vppon hys trauerſe oꝛ that the trauerſe bee aiudged againſte him vppon a demurrer in lawe, whether the leſe ſhoulde bee voide oꝛ not, like as it ſhalbee vppon the iſſue founde. And it ſeemes it ſhalbee by the wooꝛdes compꝛiſed in the ſaide ſtatute of anno 36.Edwarde.3. But not by any wooꝛds compꝛiſed in the ſaide ſtatute of an.8.H.6. Foꝛ the wooꝛdes bee tanque il ſoit aiudge, and therewith agreeth the booke in 4.H.6.fo.12. Alſo note that befoꝛe this ſtatute of anno.8. H.6. the kynge did vſe to graunte the cuſtodye bothe of the landes and body to anye other to whome hee woulde after office and beefoꝛe anye trauers tended, and this graunt was good, becauſe it was not then reſtrained by any ſtatute. Howbeit vppon the trauers tended a Scire facias ſhoulde haue beene awarded againſt the patentee compꝛehendinge in the ſame all the trauerſe. And if he had beene retourned, warned and came not, his patent had ben voide eo facto, as appeareth in the ſaide booke of. 4. Henrye. 6. at leaſt wiſe foꝛ the landes, and yet there was then no eſtatute that made them voide, quod nota. And then by and by they ſhoulde haue beene letten to ferme to him that hadde tended the trauerſe. But nowe whether ſince the makinge of the ſaide ſtatute of an.8. Henry the.6.fo.17.a Scire facias

ſhalbee

ſhalbee awarded againſt the Patentee vppon a Trauers, lerne for the ſaide ſtatute makes ſuche letters patentes voide for the graunt of the landes, but not ſo for the bodye and therefore it ſeemes a Scire facias ſhalbee ſtill awarded and the graunt alſo of the ſaide landes is not voide till after the moneth. And nowe by the ſaide ſtatute of anno. 1. Henry. 8. not till after three monethes, and ſo it ſhoulde ſeeme by the booke of. 5. and. 14. Edwarde. 4. and 8. Henry 6. that a Scire facias ſhalbee awarded at this daie notwithſtandinge the ſtatute of. 18. Henry. 6. cap. 6. whiche ordeines that all letters patentes made before the kings title found by inquiſition retourned into the Chauncerie or other matter of recorde ſhalbee voide. For that ſtatute alſo extendes but to landes or tenementes no more than the other ſtatutes do, ſo that the graunte of the bodye or of anye other thinge whiche is no lande or tenement is good at this day before any office or inquiſition thereof found. And it is further to bee noted that this ſtatute of an. 18. Henry. 6. makes not ſuche letters patentes good for anye time whiche hee graunted contrarie to the tenure of that ſtatute but they be voide fourthwith. And learne and enquire if at this daye within one moneth or. 3. monethes after office founde and retourned the maſter of the kinges wardes and liueries wil aduiſe of one of the counſell of the kinges courte of Wards and liueries made a leaſe of ỳ wardes landes or of an idiotes landes being in the kinges handes for the time of the kinges intereſt in the ſame, and after within the tyme appointed by the ſtatute comes a ſtranger and trauerſeth the office, whether in this caſe he ſhall haue ỳ landes to ferme or not. And it ſeemes that no, becauſe this ſtatut that geeues that power to the maiſter of the kinges Wardes, was made long time ſince the ſtatutes of an. 8. or. 18. H. 6. that is to ſay in the. 31. yeare of king H. 8. whiche ſtatute is generall and no ſauing or exception made of thother ſtatutes before.

H. 8 H 6. 17. 5. E. 4. 3 &. 5 M. 14. E. 4. 1

And

And then it is a general rule Quod posteriores leges priori-bus contrarias abrogant. And some thinkes at this daye for wardes lands, or ideots landes there shalbee no letrynge or the[illegible]'s terme to him that tended ỹ trauers, if they were letten before the trauers tended by the maister of the kinges wardes, but of other landes it remaines as it was before the making of this statute of a.31. Henry. 8. and note that if the kinge seise not for anye Wardshippe but onelye for primer seisin because the heire is of full age, if a straunger in this case wil trauerse it is to litle purpose. For if the kinge by and by after will make liuerie to the heire, the trauerse is become voide as appeareth 1. Henry. 7. fo. 6. for the kinge in that case hathe no cause to reteine the lande but to deliuer the same to him in whoes right he seised being able for it, and hee that tended the trauers is at no mischiefe, for hee may nowe after this liuerie pursue for his remedye against the heire, and if it shoulde tarrye in the kings handes for the trauerse sake, his highnes shoulde then haue all the profites if the trauers were founde with him for al the time that the saide trauers did depende, whereunto hys highnes hath no right but onelye the heire, and therefore it seemes there shall bee no trauerse but where the landes is to abyde in the kinges handes for a certeine tyme, as for Wardshippe, fine for alienation, or suche lyke. But if hee that tended the trauerse bee founde heire by office, and is to haue liuerie of that lande as well as the other that was first founde heire, otherwise it is for the reason made beefore. And so of an enterpleder, For in that case the kinge is bounde to make the liuerie too him that is tried rightfull heire, but not so in the case of a trauerse tended by a straunger whiche claimes not as heire, for hee is to haue noe liuerie, but only an ouster le maine, by whych ouster le main ỹ kinge deliuereth nothinge but leaues his owne possession

as one that hath no right to keepe the poſſeſſion anye lon-
ger. And it appeareth ſufficientlye that hee hadde no right
to keepe it after the tyme the heire that ſhoulde haue it was
of full age: Wherefore a ſtraunger in that caſe cannot tra-
uerſe, for ſo twoe that hadde no right, by trauerſinge toge-
ther might keepe the thirde that hath right from his poſſeſ-
ſion: whiche was neuer the meaninge of the makers of the
ſaide ſtatutes. And notwithſtanding that this booke. 1. H. 7
bee that after the trauerſe and before the ferme graunted
the liuerie was made, yet that makes no difference, for
whether the ferme were graunted before the lyuerie or af-
ter when the trauers is become voide by the liuerie, the
ferme whiche dependeth vppon the ſame is alſo voide as
mee ſeemeth. And note alſo that the ſaide ſtatute. 1. Hen. 8.
whiche geeues three monethes for hauinge the landes to
ferme makes no mencion of the treſorer of Englande, but
onelye of the Chaunceller, ſo that for anye thinge that ys
to bee letten by force of that ſtatute it muſt bee done onlye
by the Chauncellour and not by the treaſorer. As it ſhoulde
ſeeme as well of offices retourned into theſchequer as into
the Chauncerie, and therefore within the moneth after an
office retourned into theſchequer, the treſorer maye let the
landes to ferme to him that tendes the trauerſe according
to the ſaide ſtatute. 8. H. 6. But if it bee to let after the mo-
neth the Chaunceller of Englande muſt doe it as it ſhould
ſeeme. And note alſo that by a ſtatute made anno. 1. H. 8.
cap. 11. Any perſon that ſued his liuere in time of king H. 7.
vppon anye office that founde hee helde in chiefe where in
dede he helde not in chiefe, whiche ſaide offices were found
by the procurement of Empſon and Dudley in the tyme of
ỹ ſaid late kinge, maye trauerſe thoffice in like maner and
forme as he might haue done before the liuerie ſued, if it be
ſo ỹ he be now ſeiſed of ỹ ſame landes, ſauing that hee ſhall

not

not bee reſtored to the meane iſſues and profites. This ſtatute ſeemes not to extende to the parties heires that hadde liuerie, but onelye to the partie him ſelfe. Quere hoc. And note that in the court where thoffice is firſt retourned into, there I ſhall tende my trauers: as if it bee retourned into the Chauncerie, then in the Chauncerye, and if in the Eſchequer, then in theſchequer, as in deede all offices virtute officij are retournable in theſchequer onelye, and ſuch as bee virtute breuis vel commiſſionis bee retournable in the Chauncerie. And nowe by the Statute of.33.H.8.cap.22. No eſchetour maye ſitte virtute officij onely to fynde anye offise of landes holden of the kinge of the value of v.li. or aboue vppon paine to forfait v.li.

Monſtrance de droit.

The Statute of an. 36. E. 3. that geeueth a trauerſe ſaithe in this wiſe. Et ſi eit nul home qui met challenge ou claime aus terres iſſint ſeiſies que leſchetour maunde lenqueſt en la chauncellarie deins le mois apres les terres iſſint ſeiſies, et que briefe luy ſoit liuere de certifier la cauſe de ſa ſeiſin en la Chancellarie, et illeoques ſoit oye ſauns delaye de trauerſer loffice ou auterment iure ſon droit, et illeoques maunde deuaunt le roye a faire final diſcuſſion ſauns attender auter maundement. This ſtatute ſpeakes bothe of trauerſe and Monſtrance de droit diſiunctiuely, whereby a man may gather that if Monſtraunce de droit were not by thorder of the common law as it is ſaide 13.E.4.f.8. that it is yet were it geeuen by this eſtatute. And no booke that beares date before this ſtatut can I find that treates any thing of Monſtraunce de droit. Wherfore without

without preiudice to anye mans oppinion, mine oppinion is that it is geuen onely by this ſtatute, but whether it bee ſo or not ſo, I doe not greatly force. Let vs ſee what it is, & in what caſes it lieth. If the kinge bee entitled by office or other matter of recorde that is trauerſable. Howbeit there is no cauſe of trauerſe for that the office or recorde is true, in this caſe anye manne that hath right to the poſſeſſion of the freeholde of this lande whiche in ſhewinge of his right is able to confeſſe this office and auoid it, ſhalbee receyued if hee bee putte out of hys poſſeſſion or greeued thereby to come into the Chauncerie and ſhewe his ſaide right, which beinge there proued to be true, iudgement ſhalbee geeuen that the kinges handes be amoued from the poſſeſſion of ỹ ſaide landes with the meane iſſues and profites to be reſtored vnto the party that ſueth the ſaid Monſtraunce de droit As for an example, it is founde by office that the kinges tenaunt by knightes ſeruice in chiefe dyed ſeiſed of certeine landes whiche are deſcended to his heir being within age, where in dede in his life time I recouered this land againſt him, and ſuing no execution ſuffred him to dye ſeiſed therof, now vpon this office returned into the Chauncerie ſhall I come & ſhewe my right, that is to ſaye, this recouere and auerre that this lande founde by office is the lande that I recouered or parcell thereof, which being ſo proued and tried I ſhall haue an Ouſter le maine. Like law it is if the kings tenaunt diſſeiſed me of thoſe landes, and I made my continuall claime or that I had title to enter for condicion broken into the ſaide landes in the life of the kinges tenaunt, and I entred and after was diſſeiſed by him. But quere if I did not enter in his life, whether now I may bee holpen by a Monſtraunce de droit vppon the kinges poſſeſſion. And me thinkes not becauſe I haue noe righte in that caſe till I enter, for vntill that time the right continueth ſtill in hym, ſo that the kinge then hath a right ere I haue a right which

ought

ought too bee preferred and take place since it is but for a tyme before myne. And for these cases see the booke in. 3. H. 7. fo. 2. But if the king bee entitled by matter of record not trauersable as if he be entytled by double matter of record, in this case I can not haue my Monstraunce de droit no more than I can haue in the like case of Trauerse, vnlesse my title be founde by one of the saide records. As take the case to bee, It is founde by office that one suche that holdeth of the kinge disseised mee, and then committed a felonye, vppon whome I entred, after whiche entrie the saide tenaunt was attainted of the felonye, in this case I shal haue the lande out of the kings handes by a Monstrance de droit causa qua supra. And yet the kinges tytle is here by a record and not trauersable, that is to saye, thatteinder. But what thanne? My tytle is also founde by office, and appeareth by matter of record, whych beynge proued true doth clearelye auoide the kyngs possession, and that is the reason I shall be receiued in thys case to a Monstraunce de droit, as appeareth in. 3. Edward. 4. And therewith agreeth the booke 4. Henry. 7. where kyng Richard ỳ thirde was attainted of Treason by act of Parliament and found by office that he was seised of certeine land, cometh one B. and saith that in the saide Parliament it was enacted that an atteinder of treason had against the father of the saide B. shoulde bee auoided and annulled, and hee restored to his landes, and ỳ these lands cõprised in the office were in the hands of the said king R. by attainder of his father, & aiudged that vpon this Monstraunce de droit the party should haue restitucõ because his right appered by mater of record. Like law is it wher it is found by office ỳ such a one is attainted of felony. & is seised of such landes which are holden of ỳ king, nowe he that hath cause to sue his Monstraunce de droit can not be admitted therunto by reason of these two records. Howbeit if it bee so that there is noe suche attainder in deede,

M. 3. E. 4. 26
A. 4. H. 7. 6

then

then may the party that would ſue a Monſtraunce de droit ſaye that there is no ſuche recorde of attainder, which beinge founde true, hee ſhalbe receiued to his Monſtraunce de droit, as appeareth in the ſaide booke. 4. 19. 7. For nowe is there no recorde againſt him but onelye the office, and notwithſtandinge that by thoffice thattaindour is founde, yet this fyndinge makes nothinge for the kinge: if it bee vntrue: For the iurie can neuer finde a matter of recorde, and if they doe, it is to little purpoſe: for the recorde is euer triable by it ſelfe, and if there bee ſuche a recorde it will appeare thoughe they fynde it not, and if there bee none, the finding of it is voide. This may you ſee that a Monſtrance de droit lyeth ſometimes althoughe the kynge bee entytled by double matter of recorde, if it ſo bee that the parties tytle appeare by matter of recorde or elſe it lyethe not: And yet Choke, Littleton and Nedham, helde oppinion in. 14. E. 4. that if it bee founde before theſchetour that one was tenant in taile of certeine landes holden of the kinge the remaynder to another in fee, and that hee in the remainder is outlawed of felonye, and that tenaunt in taile is dead without iſſue, where in dede he beinge tenant in taile before the ſtatute De donis condicionalibus after that hee hadde iſſue enfeffed one B. in this caſe the ſaide B. ſhall ſhewe this matter, and that the vtlagarie was after the feffement made and ſo haue the landes out of the kinges handes by a Monſtraunce de droit: But it ſhoulde ſeeme their oppinion is againſte the lawe and the bookes beefore reherſed, vnleſſe this feffement were founde by office, becauſe it appearethe that the kinge in this caſe is entytled by double matter of recorde. And note that where the kinge is entitled but by office alone, there the partye maye haue his Monſtraunce de droit althoughe his title bee not founde by office, as wel as hee ſhoulde in the like caſe if he were to take a trauerſe, But otherwiſe it is where the kinge is entitled by an other recorde

M, 14. E. 4. f. 1. & 7.

Peticion. 12. Trauers. 7.

recorde beſide the office whiche is not trauerſable, there hee ſhall not bee receiued vnleſſe the parties title appeare by mater of recorde. And note that if the kynge haue cõmytted the lande ouer, he that ſueth his Monſtrans de droit muſte ſue a Scire facias againſt the committe euen as hee ſhoulde vppon a trauerſe, and as for takynge the landes to ſeruyce or for ſuynge the ſayde Monſtrans de droit durynge the tyme the heire in whoſe righte the kyng hathe ſeiſed is wythin age. Like lawe is to be vſed as is beefore declared vppon the tytle of Trauerſe.

Peticion.

PEticion is al the remedie the ſubiect hath whẽ ẏ kyng ſeiſeth his land or taketh away his goods from him hauing no title by order of his lawes ſo to do, in whyche caſe the ſubiect for his remedy is driuen to ſue vnto his ſouereine lorde by way of peticion onely: for other remedye hathe hee not, as it hath ben ſufficiently declared before vpõ the 15. cha. of the kings prerogatiue. And therefore is his peticion called a peticiõ of right, becauſe of the righte the ſubiect hath againſt the king by the order of his lawes, to ẏ thig he ſueth for. And this peticion may be ſued as wel in ẏ parleñt as out of ẏ parlemẽt, & if it be ſued in ẏ parlemẽt, then it may be enacted & paſſe as an act of parleñt, or els to be ordred in like mãner as a peticiõ ẏ is ſued out of ẏ parlement which is in this maner, firſt after ẏ peticiõ is endorſed it ſhal be deliuered to the Chaũceler of Englãd, & thẽ ſhal ther be a cõmiſſiõ awarded out of the chaũcerie to find the righte or title of him that ſueth the peticiõ, which being found by en-

queſt, then he may enterplede withe the kynge and not be-
Trauers 51. fore, as appeareth in 18. E.3. fo.15.4. E.4.f.21.11. H.4.f.50. et
10. H.4. And if vppon the ſayde cõmiſſion no title be found
for the partie but onely for the kinge, yet the petition ſhall
not abate, but the party ſhall haue a newe cõmiſſion in
that caſe for the petition is butte as voide vntill the
Peticion.11. parties title be founde by office, and is not to be ſayde depẽ-
dinge vntill that time, as appearethe in. 3. H. 7. Quere
for he ſued a newe petition in that caſe. And note that when
the petition is endorſed, the partie muſte followe and pur-
ſue the ſame according to the endorſement, or otherwiſe his
ſuite is void: becauſe the endorſemente is his warrant ther
in, as appearethe in 18. 22. et 46. E.3. and therefore ſome-
Petició.1. 3. time billes of petition be endorſed and ſent into the kyngs
&.18. benche or common place and not into the Chauncerie, and
that groweth vppon a ſpecial concluſion in his petition and
a ſpeciall endorſement vpon the ſame, for the generall con-
cluſiõ is que le roy luy face droit et reaſõ, which is as much
as if he had prayed reſtitucion of that that he ſuethe for: And
there vpon ſuch a generall concluſion the endorſemente is
Soit droit fait as pties which euer is deliuered vnto the Chã
celler, as is declared. But if the concluſion in the peticiõ bee
ſpeciall and the endorſement ſpecial, then they ſhal procede
according to the ſayde ſpeciall endorſement. As for an exã-
ple, the kinge recouereth in a Quare impedit by defaute a-
gainſt one that was neuer ſummoned, in this caſe the par
tie that loſt can not haue a writ of diſceit vntill ſuch time as
he haue ſued vnto the kinge by petition for the ſayde writt
and if in his petition he conclude and praye that the kynge
do him right generally, nowe the iuſtices before whom the
recouerie was had can not examine the deceit without an
originall writ directed vnto them for that purpoſe, and yet
before he obteined that writ his right ſhalbe enquired of by
commiſſion, but if he conclude ſpecially in his petition that

it

it maye pleaſe his highneſſe to commaunde the iuſtices to proceede to the examinacõ, which petition is endorſed accordinglye, the may they do it, wout any ſuch writ or cõmiſſiõ to be ſued, as appeareth in. 10. H. 4. So euer the folowynge and purſuyte of the thinge muſte bee accordinge to thendorſement, for howſoeuer the concluſion in the petition be, the endorſement may be allwayes as it ſhall pleaſe the king as me ſemeth, and accordinge to that the party muſt purſue it. And note that in euerye petition where the kynge hathe graunted the lande ouer to an other, a Scire facias muſte bee awarded againſt the patentee like as it ſhallbe wheare a trauerſe or Mõſtrans de droit is tended, whiche patentee yf he haue not the whole fee ſimple but that ther is a reuerſion in the kynge or that the kynge is bounde to warrauntie, when he appeareth vppon the Scire facias he maye praye a writ of Searche to bee awarded into ỹ treſorie to ſearch what theye can finde for the kynges title, as appeareth in. 9 E. 4. f. 54. where Sottle ſayethe that euerye petition muſte make mention of al the kyinges titles, for if it be found by the writ of ſearche that anye be omitted, the petition ſhall abate: ỹ reaſon of it is becauſe that yf on this ſute of petition the kinge take an iſſue with the partie which is foũd againſt him, his highneſſe then ſhal be concluded for euer more to claime by any of the points conteyned in ỹ ſayd petition. And here with agreeth ỹ boke E. 15 E. 4. But quere if ſearch ſhallbee graunted vppon a trauerſe or Monſtrans de droit, becauſe the ſtatute of An 14. E. 3. cap. 13. that conterneth ſearch doth ſpeak only but of a peticiõ, but to that it maye bee ſayde that at the time of making of ỹ ſtatut ther was noe trauerſe geeuen. And Skrene ſayeth. 7. Henry the fifth that ſearch ſhal not bee granted but where one ſuethe by petiction. And note alſo that in euerye petition whether it bee ſued in the parliament or elles where, or whether the landes remaine in the kinges handes or not in the

Trauers 51.

16. E. 4. f. 6.

Peticion. 6.

kins hãds but be granted ouer, yet writs of search shallbee awarded to search the kinks title ere ỹ party shal ẽterplede wt the king. Also in appereth in the boke of .16.E.4. before remẽbred ỹ inon a petic̃ the kinges patẽtee had ayd of that king, & there appereth also ỹ if ỹ king be not entitled by any mater of recoꝛd but without any title do entre into my land wherebye I sue vnto his highnes by petic̃on, ỹ in thys case no search shalbe graũted, because no title cã be entended foꝛ the kinge in suche case. Thus haue I opened & declared the maner of suing a petic̃on, but to declare specially where yt lyeth & where not it were a long mater to entreate of. But generally & by generall rules a man may briefly declare it, that is to say, in all cases where the partie hath a right a gainst ỹ king, & yet no trauerse oꝛ Monstrans de droit, will serue ther is hee dꝛiuen to his petic̃õ. As foꝛ an crãple, wher the king is entitled by double mater of recoꝛde. Like la w is where he is entitled by a recoꝛd not trauersable, as take the case, the kynge recouered by assent and wythout title, a straunger that hathe good title shall not salsifie this recouerie by a trauerse oꝛ Mõstrans de droit, but is dꝛiuen to his petic̃on, so it is where the kinge recouerethe by erronyous pꝛoces the partie shall not haue a wꝛite of errour, vntill he haue sued by petic̃on foꝛ it. So likewise it is if landes are holden of mee bye knightes seruice a straunger bꝛynges a Precipe in capite of those lands against my tenant & recouereth by defaut, although by this recouerie, I am not put out of possession of mye seignoꝛie but that the tenaant holdethe of me as hee did befoꝛe and also of the kinge by conclusion, yet in this case if the recouerer dye his heire wythin age, and the kynge seisethe the ward, I am dꝛiuen nowe to my petic̃on foꝛ the ward, as appearethe in .17.E.3. foꝛ thys ys an other thinge than euer I was seised of. Also it is a generall rule that where a straunger that hathe title can not

17.E.3.f. 36.

entre

entre vpon a cõmon parson but is driuen to his action, there he cã haue no remedy against the king but only a petitiõ, as take the case to be. It is found by office the kings tenant in chiefe died seised his heire within age where in dede ỹ sayd tenant had nothing but by disseisin done to me, & I suffred him to die seised wout any claim made, in this case I get no remedy by Monstraunce de droit or trauerse, but am driuen to mye petition. And so in all cases like where mine entre should be tolled if the lands were in the hands of a commõ person, as appeareth in 8.E.9.H.4. Also where as the kinge both entre vpon me hauing no title by mater of recorde or otherwise and put me out, and deteines the possession frõ me that I can not haue it againe by entrie without suite, I haue then no remedie but onely by petition. But if I bee suffred to entre, mine entrie is lawful, and no intrusion: or if the king graunt ouer the lands to a straunger then is my petition determined, and I may nowe entre or haue mye assise by order of the common law against the said straũger being the kings patentee, as appeareth in 4.E.4. f.25. & 24.E.3.f.34. And a great difference is betwene this case & the case wher the king is entitled by double mater of record or suche like, for in these cases notwithstanding the graunt made ouer by his highnes of the lands to an other, yet am I driuen still to my petition to the king and haue no other remedye, but it is not so in this case: and the reason of this diuersitie is because that when his highnes seiseth by his absolute power contrarie to the order of his lawes, although I haue no remedy against him for it but by petitiõ for ỹ dignities sake of his person, yet when that cause is removed & a comon person hath the possession, then is mine assise reuiued, for now the patentee entreth by his owne wronge and intrusion, and not by anye title that the kynge geeueth hym for the king had neuer title ne possession to in that case: and

M.7H.4.fo. 27.36.et 41. T.9.H.4.f.7 et 11.

Assise.P.156

therfore not lyke the other cases before, where the kynge hath the landes by the order of his lawes that is to saye by
Trauers. 134 double mater of record or such other like. And this appereth in 4.E.4.f.21.& 25.et m.24.E.3.f.34.et 33.li.ass. Like lawe is if I haue a rent charge oute of certaine lande and the tenant of the land enfeffed the kinge by dede enrolled, nowe during the kinges possession I must sue by peticion, but if his highnes enfeffe a stranger I may distreine for my rent vpon the stranger, and so is it in all the cases before. where a man may haue his trauerse or monstrance de droit, if the lãds be once out of the kings hands, the party thẽ may haue his remedie that the comõ lawe geueth him: for in all these cases the peticion did lye onely for the dignitie of his person and not for the right that he had to ẏ possession of the thing. But if the kinge purchaceth lands holden of mee, learne what remedie I may haue for my seignory during ẏ kinges possession: for wilby sayeth in 20.E.3. that I haue no remedie
Assise. 124. in ẏ case and if his highnes make a feffmẽt of these lands to hold of him self, yet can I not distreine for my seignorie like as I might do in the case of the rent charge before, bicause there can not bee ii. seignories of one self land, but am driue
Peticiõ. 18 to my petitiõ in this case, for the king vpon this feffmẽt by order of his lawes shoulde haue receiued the seignorie in mee that is to say, to haue aide the feffee to hold of me of whome it was hold before, as appereth in 46.H.E.3.f.17.E.3.f. 59 and so hathe it ben vsed alwayes where his highnes hathe lands by forfaiture of treson holden of a cõmon person, if he make a feffement of those lands it must be Tenend of them that they were holden of before as I haue opened vpon the xii. chapter of the kinges prerogatiue. And so it is where the time is cõcluded to his highnes for a mortmain: But that is geuen by the statut de religiosis. Also if the kinge disseise my tenãt, during this possessiõ I haue no remedie for my seignorie but only by peticyon, & if ẏ kinge ẽfeff mye tenãt to hold

of

of his highnes, yet haue I no remedy for my seignorie, but only by petition. But if one holde certeine landes of mee which are falsly found by office to be holden of the kinge in Capite, and the king seiseth them & enfeoffeth my tenaunt thereof to hold of his highnes, in this case I may not distreine for my seignorie & am not oute of possession, & these cases appere. 20. 32. et. 46. E. 3. fo. 10. & the reason of the diuersitie is this, because that in the laste case my seignorie was neuer suspended, but euer more had his being and that notwithstandinge thoffice, for it did not appertaine to mee to trauerse thoffice and discharge the tenure, but that matter was left to my tenant to do, and seemge hee did it not hee hath charged him selfe of a tenure by way of conclusion to the kinge as well as to mee, but it is not so in the other case. Also it is to bee noted that if the kinge seise landes in title of Wardshippe and make a feffement thereof in thys case the heire neede not to sue his petition but may haue a scire facias, to repele the said letters patents, because ỹ king was deceiued in his grant as it appereth. T. 7. H. 4. fo. 14. & M. 21. E. 3. fo. 50. For there the king himselfe is in possession still till liuerie be made so ỹ heire there hath no cause to sue by petition, & the kinge is bounde to deliuer it vnto him in whose right he seised. Also note that sute by petition can be to none other than onely to the king, for no such sute shalbe made to the Quene or to the lord prince, for these parsonages haue no such prerogatiue, as it appeareth 10. & 11. H. 4 et. 10. et. 14. E. 3. but though the kinge bee seised sometime in an other bodies right and not in his own, yet the sute that is to be made must bee by petition as well as if hee were seised in his owne right, as appereth. 10. H. 4. And as I said in the beginning a manne shall haue his petition for goods as well as for landes, as where thescheatour seyseythe goodes of one that is outlawed and hathe accoumpted for them in the Eschequer and after thutlagarie is reuersed

Auowrye. 113. Assise. 122. 124. Trauers. 51. Petition. 4 Voucher. 135. Scire facias 135.

In this case ỳ partye hathe no remedy for his goods but one
Peticion.8. lye by peticion. And this case you shall see in.34.H.6. How-
beit Catesby & Hussey hold oppinion to the contrary here
Peticion.10 of H.1.H.7. And learne if a peticiō be sued for lands and the
plaintife be nonsute whether it be peremptorye or not, bee-
Peticiō.11.et cause some saye that that sute is as it weare hys writte of
17. right, and hereof see the booke.11.H.4.&.3.H.7.

Where a Scire facias must be sued before a lyuerye or Ouster le maine.

IF the king be seised of a ward and grantethe yt durante minore etate now when the heire commeth of full age and sueth his generall liuerie he nedeth not to sue a Scire facias against the patentee, because his estat is determined by the ful age of ỳ heire, and yet it may be that the heire had forfaited his mariage vnto the patentee, and then hee hathe good cause to reteine the lande til he bee satisfied of the forfaiture. But the lawe shall not entende anye suche forfaiture to bee, and therefore ther nedeth no Scire facias be sued. Like law is it, as semeth if the king graunt the wardshyppe for no time certaine, but quamdiu in manibus nostris fore contigerit, if he make a special liuerie vnto the heire beeinge within age, there needed no Scire facias to be sued, so is it where the grant is but dutante beneplacito nostro, but if the kyng haue land in ward and enfeffeth therof a straūger some think the heire nedeth not to sue any Scire facias against the feffee but at his pleasure, and some other thinke he muste, beecause his estate is not determined by the full age of the heire, as it is in the firste case I put before. And it may be that an auncester collaterall

laterall vnto the childe hath released with warrantie whiche is descended which the feffee might plede if he came in by Scire facias or els by the liuerie the saide warrantie is vterly lost, these cases appeare 9.7.9.4.f.27.30.& 41.10.9. 6.f.21.9.1.f.7.f.11.& 5.E.4.f.3. Yet albeit me thinks it were wisedome for the heire to sue a Scire facias to thentent that he therebye with the kinges helpe mighte repelle the sayde letters pattents and bringe them as it were out of his way. whiche thinge hee may soner bringe to passe by the kinges sute than by hys owne. Also the heire when hee sues liuery nede not to sue anye Scire fagias againste him that hathe the landes to ferme vppon a trauers, as appearethe in 1.9.7. for hee hath noe terme certaine in the land but donec discussum fuerit, whiche woordes are beecome voyde after the heire is of full age, because it can not be then discussed with oute preiudyce of the heire: and therefore voyde. Then further let vs see wheare hee that sueth by petition or that tendeth his trauers or Monstrans de droit shall sue a Scire facias and where not. And as to that it is a generall rule that yf the kynge haue graunted the wardshyp of the landes ouer for any terme certaine, or granted any other certaine estate in the landes, he that sueth his petition, Monstrans de droit, or trauerse muste sue a Scire facias againste the kinges patentee in suche case, but hee needeth not to sue any againste the heire in whose righte the king is seised of the lande, because he that sueth doth not pleade withe the heire but onelye with the kynge or such as hathe his interesse, as appearethin 37.lib.Ass. Like law it is if the kyngs grant be but durante beneplacito nostro, or that it bee made bangynge the trauerse, petition, or Monstrans de droit, in this case hee that suethe neede not to sue any Scire facias. And these cases appeareth in 5.E.4.f.3.& 13.E.3. And note that if the kynge graunt the wardshippe to one whiche graunteth it ouer to the husbande and to his wife, then must there a Scire facias

M.12.E.3.59
2.H.7.f.2

Liuery.P.18

Trauers 25.

Brief P.260.

be ſued bothe againſte the ſeconde leſſee and the patentee, but the wyfe nede not to bee named in the Scire facias. For there lyeth no voucher in this Scire facias Howbeit in a writ of garde ſhe ſhoulde haue bene named, but al-
Brief. 618. ſo of the voucher, and this caſe is adiudged. 44. Edwarde the thirde and yet neuertheleſſe Neuton is of oppinion in. 8 Henry the firſte f. 17. that no Scire facias ſhalbee awarded againſte the leſſee in this caſe but onelye againſt the kings patentee. And learne if the kinge graunt but the bodie alone whether there nede anye Scire facias to bee ſued or noe. Alſo note this caſe, that is to ſay, where the king ſeiſed for warde-ſhippe before office and made a graunt ouer, and after office was founde wher bye it appeared that the childes fa-
Aſſiſe. P. 156 ther in whoſe right the kinge ſeiſed, was but tenaunte for terme of life, the reuerſion to an other, in this caſe he in the reuerſion hadde an Ouſter le mayne without ſuinge anye Scire facias againſte the patentee, as it appeareth in. 10. Edwarde the thirde, and at this daye the caſe is more ſtronger for ſuche a graunt were voide becauſe it is before office. And therefore vppon anye ſuche voide graunt there neede no Scire facias And in. 14. Edwarde the ſowerth fo. 1. it appearethe that one had trauerſed an office whiche was ſente into the kinges benche to trye and had forgotten to ſue his Scire facias, and yet hee was ſuffred to goe agayne into the Chaunterie to praye a Scire facias vpon the firſt trauerſe for it was ſaide that the Chaunterie is a courte of conſcyence and for that cauſe the thinge that was there amiſſe may be reformed at all times. And learne if this Scire facias bee ſued againſte manye and one of them dyeth whether this ſhal abate the trauerſe, Monſtrans de droit, or petition wherupon it is ſued or elles onelye the Scire facias, It ſemes that nothinge ſhall abate but the Scire facias becauſe no mentiõ is made of the tenaunt neither in a trauerſe Monſtrans de droit or petition. And of this mater ſee the booke in H. 7 H. 4. fo. 28.

Ouſter le mayne.

OVſter le mayn is the iugement that is geuen for hym that lendeth a trauerſe or ſueth a Moſtrans de droit or peticion, for when it appeareth vpon the matter diſcuſſed that the kinge hathe no righte nor title to the thinge he ſeiſed, then iudgement ſhalbee geeuen in the Chauncerie that the handes bee amoued: and thereuppon Amoueas manum ſhalbee awarded to the ſchetour, whiche conteruailes as muche as if the iudgemente weare geeuen that hee ſhoulde haue againe his lande as appeareth, in 24. E. 3 f. 34. and this iugement ſometime is geuen in the kinges bench and not in the chauncerie, & that is in caſe where the parties deſcende to an iſſue. then for the tryall thereof theye of the chauncerie muſte awarde a venire facias returnable in the kings benche at a certaine daye, at whiche day notwithſtandinge that the ſhirife returne not the writ, yet the Alias venire facias ſhall not bee awarded out of the chãcerie but oute of the kinges bench: for there and no where els it is recorded, quod vicecomes non miſit breue, as appeareth in. 13. E. 4. f. 8. And when the iſſu is found for ỹ parte they of the kinges bench ſhall geue iugement & awarde an ouſter le maine without ſuinge for the ſame in the chãcerie as appeareth in 21. H. 7. & .29. li. aſſ. and yet the recorde of the iſſue that was tryed was not ſent thether but onelye ỹ tranſcript thereof, but what then, the iudgement is to be geuen vpon the verdit which is there of recorde, and when bothe courtes bee courtes of the common lawe and the kynges courts, theye vſe not to remaunde anye thynge to the place from whence it came but to geue iugemẽt there where it is tryed, and Sharde ſayde that when a recorde comes once into the kynges benche, it ſhall neuer go from thence. Liuery. P. 19

Alſo

Also note that sometime there goeth an Ouster le mayne as well to the kinges patentee as to the escheatoure and that is where the kinge hath graunted the thing that hee seised to any other, but notwithstanding ỹ there go such wrytes of Amoueas manum bothe to thescheto, and to the partie, yet the kynge is out of possession as sone as iugement is geuen in the chaunceric, not forcing whether any of these wrytes bee awarded or not either to thescheatoure or to the partye: and thereupon the partie for whom iudgemente is geuen may entre forthwith into the landes and shalbee sayde noe intrudor, as appeareth in H.6. E.3. and the reason of yt is Assise p.156. because the iugement tyethe not the kynge to the delyuerye of the possession, but onely to leaue hys handes of the possessiō. And note that if a Diem clausit come to the escheto, he by vertue of that wrye beefore he make any enquirie may seise the lande for the kynges beehoue, whiche after he hath once seised, if after by office noe title bee found for the king then the party ỹ ought to haue agayn the land, may sue for the same in the chaunceryе where the office is returned and then Amoueas manum shalibe awarded, for vntill the makynge of a statute at Lincoln. Anno 29. E.1. called the statute De escaetoribus the partie hadde noe remedye in suche case but onelye to sue vnto the kinge himselfe, as it appearethe by the sayde statute, and nowe that statute geeues an Ouster le maine vna cum exitibus. Howbeit this Ouster le mayne maye not bee sued by parcels no more than a liuery and therefore if diuerse wrytes or commissions bee awarded into diuers counties to enquire after the death of A. B and in one countie it is founde that hee holdethe nothynge of the kinge but in socage, and in the same countie and bye ỹ same ẽquest it is foũd ỹ he holdeth of an other by knights seruice yet ỹ lord by knights seruice getteth noe Ouster le main vntil ỹ other ẽquests be also returned in, Causa qua sup

For

for if he ſhould, then he ſhould haue it for the lands and not for the body, and ſo ſhould haue it by parcelles, for the bodie may not be deliuered as long as there is anye enquell to be returned in. And the reaſon of it is, becauſe that enquelle may finde a tenure of the king by knights ſeruice in chiefe, in which caſe his highnes ought to haue the whole landes, and if it bee but a cõmen tenure by knyghtes ſeruice, yet hys highneſſe at the leaſte ought to haue the preferrement of the bodye, yea & thoughe the lorde of whom it is founde to be holden be the archebyſhoppe of Caunt or ſuche a one againſt whõ the kings prerogatiue will not hold for the landes, yet becauſe it holds for the bodies he getteth no Ouſter le maine vntil al the offices be returned in, for the reaſon be fore made, as appeareth in 16. E. 3. Howbeit by fauour and grace of the court tharchebiſhoppe had his Ouſter le maine beefore the other offices returned. And ſo note howe in tymes paſt men haue ſued Ouſter le maine vpon a ſeiſin made for the kynge although the office founde afterward did not entitle his highnes. Howbeit at this day it is not ſo vſed, for thereto or will not ſeiſe vnleſſe there be an office found, although he might lawfullye do it by the words of the writ Diem clauſit, whiche vſage I do nothinge miſlike, conſideringe the great trouble it auoideth that might els enſue to the kinges ſubiectes. And note that in all caſes where the king is ſeiſed or in poſſeſſion of the lãd by office or any other mater of recorde, his highnes ſeiſin can not be deliuered out of him vntill ſuche time an Ouſter le maine bee ſued, as if the king be ſeyſed by office of the lande, of any Idiots or for ánũ, diem & vaſtũ of lands of any that is attainted, in theſe caſes he that ſhoulde haue theſe landes after the kynges title determined muſte ſue an Ouſter le maine, otherwiſe yt is where the kyng is not ſeiſed of the land but only entitled to the profites, as of the landes of him that is outlawed in a perſonall action, or of clerke conuicte or ſuche like, there

Liuerie f. 29

nede

nede no Ouſter le mayne to be ſued, as appeareth in. 8 E. 2.
Trauers 28. 4 E. 3. and. 9. H. 6. f. 20. and if the landes whiche is ſeyſed into the kynges handes bee holden ioyntlye bye manye yet euery one of them by hymſelfe may ſue hys Ouſter le maine of his owne parte withoute his companions, as appeareth
Aſſiſe p. 166. in. 2. H 4.

Lyuerye.

The maner of the ſuing of a generall liuery doth partly appere in the title of Liuerie in the great abridgemēt of Juſtice Fitsherbert A. 12. H. 4. ti. Liuerie P. 4. & A. 21. R. 2. ti. Liuerie. p. 5. Wher it is declared ỹ after the heire that was in the kings warde is come to full age, then a writ De etate probanda ſhalbe awarded vnto the ſhiriffe of the ſhiere where the ſaid heire was borne, to ēquire of his age, in which caſe it is required by the lawe ỹ euerye one that ſhall paſſe in that enqueſt ſhalbe of the age of. xlti. yeares, meaning therby ỹ they & euery one of them ſhoulde be of full age at birth of the childe, beecauſe that ſuche haue better knowledge and remembraunce then other of leſſer age haue, and that the heire that is in warde enformeth the enqueſt by certaine ſignes and tokens of the tyme of his birthe, as to ſay, that that yeare there was a great tempeſte or a greate plague, or ſuche like, which ſignes ſo geuen in euidence ſhalbe returned by the ſhiriue as well as the principall mater. But whether it bee requiſite to haue xlti. or a leſſe number in the ſayde enqueſt or not, learn, for ſoome think that any number from two vpwarde will ſerue, beecauſe the triall is by prones, and ſee the newe Natura breuium fo. 186. wher it appereth that this writ of Etate probanda

was

was directed to the eschetour of the countie where hee was borne and not to the shiriue. Howebeeit note alwayes that theye where the lande is shall neuer enquire of this mater, vnlesse the birthe and lande weare bothe in one shiere, for they haue enquired of it allredy, that is to say when theye dyd fynde the firste offyce. Thus when theye haue founde his age, that enquest shallbee returned into the Chauncerie, and from thence shalbee awarded a writte to the Lorde Keeper of the priuie seale, signifying vnto him that the heire is of full age, and vppon that a priuie seal shallbee directed to the Chamberlaine of Englande to receiue his homage, whiche beynge receiued, the sayde lorde Chamberlaine shall certifie the lorde Chauncellor by writte of the receipte thereof, and then shall the heire haue his liuerie. But it seemes that if the heire were neuer in warde but of full age at death of his auncestor and so founde by office, that thenne hee shall haue liuerie as is declared vppon that office onelye, without suynge anye writte of Etate probanda: for the writtes of liuerie in thys case make no mention of anye Etate probanda as they doe in the other case, but if the heire bee within age and in the kyngs warde and after when he comes to his ful age other landes descende vnto him whiche the kynge allso seisethe by an enquest that fyndes the heire of full age, yet this not withstandynge hee must now sue an Etate probanda vppon bothe offices, as appearethe in M.13. Henrye the fowerthe. And the reason of it is, beecause the fyndynge of hym of full age is but as voide as longe as there is a recorde whiche founde hym within age, to the whiche record the kynge mighte cleaue vnto as the best recorde that makethe for hym vntyll suche tyme the contrarie thereof be proued bye the writte of Etate probanda. Howebeeit at this day the statut made Anno.33.H.8. hath much abridged M.13H.4.

the

the fees that haue bene geuen vpon the ſute of a generall liuerie, namely for liueries to be ſued of clere yearely value of v.li. or vnder, and that it may be ſued without any office to be founde. But I do not ſee that the maner of the ſute is in any other point altered or changed by the ſayd ſtatute but it remaines as it did before. And that ſtatute alſo geueth men licence to ſue a generall liuerie of landes not exceedinge the cleare yerelye value of.xx.li. whereby I ſee no let but that a man may ſue his generall liuerie alſo for landes aboue the yerely value of xx li. as he might haue done before the makynge thereof, for this ſtatute is not contrarie to anye lawe that was before in that pointe, ſauinge that a generall liuerie vnder the value of. xx.li. can not paſſe or be ſued yf he haue not firſte his warrant from the maiſter of the kynges wardes and liueries, ſurueyours, atturneys, and generall receiuour, or three of them, ſigned and ſubſcribed with their names and hands. Thus may you ſee the maner of the ſuing forth of a generall liuerie, which liuerie may not be ſued by parcelles as I haue ſayde before, but entierlye, that is to ſay, of all the landes the kinge is or ought to be ſeiſed of in his right that ſues the liuerie. And therefore if the heyre ſue liuery but of parcell of that that is founde by office, or yf the auncеſter weare ſeiſed of other landes than are foūd bye office, yf the heire ſue his generall lyuerie before an offyce thereof founde omittinge them in the liuerye, the lyuery is miſſued, as appereth in.12.R.2.44. E.3.f.2. H.7. and therefore it behoues the heire before hee ſue his lyuerye to cauſe an office to bee foynde in euerye ſheere where hys auncеſter hadde anye landes. And this entier lyuerye is intended as well of landes holden of other lordes beinge in the kinges handes as of the landes that are holden of the kinge, and therefore if a manne holde of the king in chiefe by knightes ſeruice and of other lordes in ſocage

T.12.R.2.
44.E.3.f.10.
et.22.
2.H.7.f.2.

ſocage and die his heir being a daughter within the age of xiiii. yeres, in this caſe when the ſayd daughter cometh of the age of xiiii. yeres ſhe getteth no liuerie of the lands holden in ſocage: but muſt tarry till ſhe be of the age of xvi. yeres, ỹ ſhe may then ſue liuerie of the whole, as appereth. 35. H. 6. F.N.B.H.6. Liuerie.19.

But note that in ſome caſes one ſhal haue liuerie of parcel, and that is where landes deſcend to diuerſe daughters and one is within age and the other of full age, now ſhee of full age ſhall ſue liuerie with a partition of her parte of all thinges that are ſeuerable: and this liuerie is well ſued although it be not of the whole lãds deſcended, but if ther be any things in the kings hands not ſeuerable, as aduouſons or ſuch like, that muſt ſo remaine ſtill vntil the other bee of full age, as appereth. 38. H. 6. And ſo note that in a general liuerie if any thing be omitted, the liuerie is miſſued: and therfore ſome ſaye that after ſuch a general liuerie had there ſhalbe a writ awarded to enquire of the concelement, that is to ſaye, whether the heir hath left out of his liuerie or not any of the lãds that were his auncetors, which writt is called breue de terris concelatis. And ſee the ſtatut. 28. E. 3. ca. 4. that geues the rents to them that ſue liuerie when the rent day cometh although it cometh next day after their liuerie. And loke more for liuerie in the expoſitiõ vpon the third chapiter of the kings prerogatiue. 38. H. 5. f. 10.

Reſeiſir

Reſeiſir lieth where a general liuere or ouſter le main is miſſued by any perſon or perſõs vnduely and not according to the forme and order of the law, or vpon an office which is inſufficient in the law for the partie to haue liuerie or ouſter le main, in this caſe the king may

reſeiſe the lands without ſuing any proces againſt the par
Liuerie P.C. tie, and ſhalbe aunſwered of all the meane iſſues and pro
fits receiued and taken from the time of their firſt ſeiſier if
it were ſued out of his hands by an ouſter le main, and if by
a liuerie, thē but from the time of the liuerie. And the partie
that hath purſued it ſhalbe accompted none other than as
an intruder vpon the kings poſſeſſion after office, in which
caſe no freehold ſhalbe aludged in him, nor his wife of that
poſſeſſion ſhal haue any dower, as appereth 18.E.3.21.E.3.
H.2.E.3.f.1. fo.1.& 24.E.3.fo.34. But if one haue liuerie or ouſter le main
24.E.3.34. by due proces, and after a record is found in the treſorie or
elſe where or an office in the contrie, whereby the kinge is
entitled of a title growē vnto hi before ỹ ſuig of ỹ ſayd liuerie
or ouſter le main, although the partie ſhoulde haue had no
liuerie or ouſter le main in caſe the ſayd records had then ap
pered vnleſſe he could haue auoided the ſayd records, yet for
as much as they did not then appere, he ſhal not bee nowe
after liuerie or ouſter le main caſt out of his poſſeſſion with
out a Scire facias to be purſued againſt him, for ſo hath the
ſtatut prouided that was made at Lincoln in ỹ 29. yere E.1
called ſtatutum de Eſcaetoribus, the tenour wherof is this
Ad parliamentum regis apud Lyncolne tentum in octa
bis ſancti hillarii anno regni ſui viceſimo nono per conſilium
regis concordatum eſt coram domino rege, ipſo rege conſē
tiente et illud extunc fieri et obſeruari precipiente, de conſi
lio venerabilis patris w. de langtō Couētr' et Lychf. epiſcopi
tunc eiuſdē regis Theſaurarii, Iohannis de Langton Cancel
larii et aliorū de conſilio tunc ibidem preſentium, et coram
rege, videlicet, Cum inquiſiciones per eſcaetores ſuos capte
per quecunque breuia Regis in cancellaria ipſius domini re
gis fuerint retornā, et per eaſdem inquiſitiones compertum

fuerit

fuerit quod nihil tenetur de ipſo domino rege, per quod cuſtodie terrarum et teñ huiuſmodi ratione inqũiſitionis in manum domini regis per ipſos eſcaetores capte ad ipſum dominum regem nullo modo pertineant: quod ſtatim & abſque dilatione aliqua mandetur per breue domini regis de cancellar' precipiendo quod eſcaetores de terris & tenementis ſic in manum domini regis per ipſos captis manum ſuam amoueant omnino, & exitus ſi quos leuauerint de ipſis terris et teneñtis ſic in manũ domini regis p ipſos captis de tempore quo terre & teñ illa in manu domini regis extiterint, integre reddant ipſi vel ipſis cui vel quibus per inquiſitiones prius per eoſdem eſcaetores captas compertũ fuerit quod terra et tenementa illa debeant remanere, ſaluo ſemper domino regi, quod ſi poſtquam eſcaetores ſui manus amouerint, per breue ipſius domini regis, vt predictum eſt, aliquid contigerit inueniri in cancellaria vel ad ſcaccarium, vel alibi in curia ipſius domini regis, per quod cuſtodia terrarum aut teñ eorundem, de quibus eſcaetores manus ſuas amouerit in forma predicta domino Regi pertineant, quod ſtatim premuniatur ille, in cuius ſeiſina tenementa predicta fuerint per breue de cancellaria, quod ſit ad certum diem coram domino rege, vbicunque &c. oſtenſ. ſi quid pro ſe habeat vel dicere ſciat quare dominus Rex cuſtodiam earundem terrarum et tenementorum habere non debeat, iuxta formam euidentiarum ſeu memorandorum pro ipſo rege compertorum. Et ſi venerit, & pro ſe oſtendat quare eadem cuſtodia ad dominum regem non pertineat aut pertinere non debeat immo quod remanere ſibi debeat recedat quietus, & cuſtodiam ſuam retineat. Si autem premonitus non venerit, vel venerit, & nihil ſciat dicere, quare rex cuſtodiam illam habere non debeat, ſtatim reſeſientur terre & tenementa illa in manum domini regis nomine cuſtodie tenend. vſque ad legittimam etatem hered. eorundem, ſicut ſuperi⁹ dictum eſt

Et ſi compertum fuerit per inquiſitiones per eſcaetores ſuos factas et retornatas, quod cuſtodia eorundem terrarum et teñ in inquiſitionibus contentorum, et in manum domini ſeiſitorum domino regi remanere nō debeat, quod ſtatim máde tur eſcaetoribꝰ quod manus ſuas amoueant, et exitus integre reddant. &c. Eodem modo ſi poſtea compertum fuerit per euidentias & memoranda in cancellaria aut ſcaccario vel alibi, vt predictum eſt, quod dominus rex cuſtod' eorum habere debeat reſpondeatur ipſi domino Regi de exitibus integre per manus illorum qui terras, aut tenementa illa tenuerint a toto tempore, poſtquam terre et tenementa illa primo in manum ipſius domini Regis per eſcaetores ſuos capta fuerit per breuia ſupradicta & iſte mōdus de cetero obſeruetur in cancellario, nō obſtante quadam ordinatione nuper per dominum regem facta de terris & teñ in manum ſuam per miniſtros ſuos capt' & non liberand' niſi per ipſum dominum regem, & prout continetur in quadam diuidenda inter ipſum regem & cancellarium facta. Cuius vna pars penes cancellarium remanet. Statutum de eſcaetoribus editum. 29. E. 2. **Alſo a yeare before the makinge of this ſtatut was there an other ſtatut made entitled** articuli ſuper cartas **which in the 19. chapiter therof ſaith in this wiſe.** De reſcheiue la ou leſche tour ou le vicont ſeiſont en le main le roy terres la ou il nad reſon de ſeiſer et puis quant troue eſt la non reſon les iſſues de meſne tēps ount eſte ceo en arrere retenꝰ et nad rendus quant le roy ad le main ouſte, voet le roy que deformes la ou terres ſont iſſint ſeiſies et puis le main ouſte pur ceo que il ny ad raiſon de ſeiſer ne tenir ſoient les iſſues pleinment rēdus a celuy a qui la terre demurt et auoit le dam̄ reſceu. **By this ſtatute it plainly appereth how that before the making therof there was no** ouſter le main **graunted** vna cum exitibus **although it might neuer ſo plainly appere that the kinge had no cauſe to ſeiſe. Howbeit that miſchief is now remedied by both theſe ſtatutes. Alſo by the one of theſe ſta-**

tutes

tutes. Also by thone of these statutes it appeareth that the Ouster le maine in suche case might not be graunted without suinge to the kinge himselfe, which is also remedied by this statut de escaetoribus, which statute although it make no mencion of liueries, but onely of ouster le maine, yet liueries are taken to bee within the compasse and prouision of the same. And where the letter goeth onelye to the cases where the kinge seiseth before office, and after warde thoffice that is founde doth giue his highnes no title, that there the party may haue his Ouster le maine makinge no mencion of an Ouster le maine to be graunted vppon anye petition, trauerse, or Monstraunce de droit, as in deede a trauerse was not in vre at that time, yet men by an equitie extende this statute de Escaetoribus bothe to the one and to the other, because the statute is beneficiall, as it appeareth 9. E. 4. and in diuers other bookes. And Yeluerton there saieth that if after liuerie or ouster le maine an office bee founde whiche entitleth the kinge of a title growen vnto him since the liuerie or ouster la maine granted that in that case this statute notwithstanding the kinge may resseise wout a Scire facias, for the woordes are onelye where a record or an office is founde that maintaineth the title whereby ỹ kinge first seised. Howbeit manye holde oppinion againste him, and saie that it was in the selfe same mischiefe the statute was made for, tamen quere, for this statut de escaetoribus shoulde seeme to be meant onely to remedy that ỹ was a mischief at comō law before ỹ making of ỹ said statut, as where there was no record found at ỹ time of ỹ liuerie or ouster le maine sued to let or hinder the partie from suynge of theire saide liuerie or ouster le maine, but afterwardes was there found such a record, now this notwithstandinge would the king resseise & putt the partie from his possession wout answer or anỹ proces sued against him, wherupon he might answer & so driue him to sue by petition & make him

9. E. 4. 54.

render all ỹ mene pꝛofite, which was a greate miſchiefe & hinderance to ỹ partie, foꝛ remedie whereof this ſtatut was made: but the like miſchiefe oꝛ hinderance is not where the kinge is entitled by a title growē ſince the liuerie oꝛ ouſter le maine, foꝛ here ỹ partie ſhall not aunſwere the pꝛofites but frō the time of this title growen. And alſo the kyng doth him no wꝛonge, foꝛ it ſtandes wᵗ and affirmes ỹ liuery oꝛ ouſter le maine, & the king thereby makes not ỹ party an intrudor as he doth in the other caſe, & if the ſaid Yeluertons opinion ſhould not be lawe, they woulde make ỹ the kinge could not ſeiſe vpon an alienation wᵗout licence made and found by office ſince ỹ liuerie oꝛ ouſter le maine ſued, which were no reſon, & therefoꝛe I think the ſaide Yeluertons opinion ſhould pꝛeuaile in this caſe. And to the ſame intente & effect be thoſe bookes ỹ I can fynd, foꝛ I can finde no Scire facias ſued but in caſes of a title growen befoꝛe the liueries oꝛ ouſter le maine: & therefoꝛe in a Scire facias ſued vpō this ſtatute againſt ỹ party ỹ had liuerie oꝛ ouſter le maine beeing tenant of the land at ỹ time of Scire facias ſued he was denyed in the ſelfe ſame plight & courſe againſt the king as he was at time of ỹ ſuing of his liuerie oꝛ ouſter le main: foꝛ where he had made a feffement by licence & taken an eſtate againe iointly to him & other, yet this ſcire facias dyd lye againſt him ſoly & did not abate, foꝛ the iointenauntes. So was it aiudged in a ſcire facias ſued vpon this ſtatute ỹ the partie muſt maintaine the title, whereby he hath liuery oꝛ ouſter le maine, & muſt maintaine it ſo that it is & was a good title & ſufficient to haue liuerie vpō, notwithſtanding any recoꝛde that is now found, as take the caſe to bee this, one hath liuerie as ſole daughter & heire, & after by office it is founde ỹ ſhe hath a ſiſter, which ought to haue had liuerie wᵗ her, wherupon a ſcire facias is ſued againſt the partye ỹ had liuerie, to come & ſhew why the land ſhould not bee reſeiſed, if ſhe come & will ſaye that they be daughters by ſe-

uerall

ueral bentres, & that this lande was geeuen to her father & mother in ſpeciall taile, & ſo ought ſhee to haue the liuere as ſhe had, ỹ is to ſay ſoly, this plea will not ſerue her, becauſe it doth not mainteine ỹ liuerie: for how could ſhe haue had liuerie ſoly, vnleſſe this matter had bene ſo found by office. For if this ſecond office had appeared before the liuerie, ſhe coulde not haue trauerſed it, vnleſſe ſhe had made title, and then title can ſhee neuer make againſte the kynge as here vnleſſe the ſaide title bee firſte founde by office. Wherfore no more than ſhe might trauerſe the ſaid office if it had bene found before liuerie, no more may ſhe trauerſe it now Trauers, 31. in this ſcire facias after liuerie, as it appereth 30. li. Aſſ. and ſo note that ỹ recorde can not bee trauerſed in this ſcire facias in no caſe vnleſſe it were trauerſable before liuery or ouſter le maine. Alſo in the new Natura breuium fo. 293. and in. 5. H. 5 H 5. H. 5. I finde a ſcire facias ſued vpon this ſtatute againſt him that had liuerie, becauſe an office hath found an other to be nerer heire to the auncellour that dyed than was hee that ſued liuerie. So alwaies as farre as I can finde it is ſued vpon a recorde ỹ diſproues the liuerie or ouſter le maine, and not vpon any that affirmes it, whereby I ſuppoſe that yelwertons opinion is lawe as is beefore declared. And it ſemes that by this ſtatute the king muſt ſue a ſcire facias although the recorde or title that is found for him bee founde within a yere after liuerie or ouſter le maine ſued. And lerne whether Aſſiſe lye againſt ỹ eſchetour that ſeiſeth without a ſcire facias in caſes where a ſcire facias ſhould be ſued. For by ỹ ſta. of W. 1. ca. 24. aſſiſe lieth againſt him in caſes wher he ſeiſeth anye landes by colour of his office wout ſpeciall warrant or commaundement or certeine authoritie that belongeth to his office ſo to doe. And learne whether the king by that ſeiſure hath any poſſeſſion, for if the king ſeiſe without a ſcire facias where he ought to ſue a ſcire facias, the partie hath no remedy but to ſue vnto him by petition euen as he ſhould do if his highnes had ſeiſed any other lands of his

without cause. Howbeit the king by such a reseiser vndoeth not the parties possession, so that he shalbee saide an entruder from the time of the liuerie or ouster le maine sued as it doth in case the reseiser had bene vpon a scire facias; wherfore in such case although the partie cannot be suffred to recouer his possession againe by entrie vpon the king, yet when the kinge graunts it ouer, he may now enter or haue assise, as appeareth. 24. E. 3 fo. 34. et. 43. li. Ass. Also note ỹ this statute that geeues the scire facias extendes but vnto him or them haue liuerie or ouster le maine or anye other claiming by them. For if after liuerie ou ouster le maine sued a stranger by an eigne title in disaffirmyng the tenãts interest enter as heire vpon him, or recouer by assise of mor dauncestor or any other accion auncestrell against him & is entred into the land as heire, nowe because the landes are holden of the king in chiefe, his highnes may seise the saide land for primer seisine or title of Wardshippe as the case doth require without any scire facias, as appeareth. 21. E. 3. fo. 1. For it is not to be said now a reseiser, because against hym there was no seiser made of the saide landes before. And lerne & enquire if he that misshueth the liuerie be within age whether the king shal reseise in that case as he shall doe if it were misshued by one of ful age, as take ỹ case to bee, landes are holden of the kinge in Socage in Capite, now the liuerie is sued within age, that is to saye at the age of. 14. yeres whether in this case ỹ misshuing of ỹ same shall be a cause of reseiser or not, see the booke thereof 12. R. 2. The wordes of the statute be further, that if any record be found in the tresorie or elles where that vpon this record a scire facias shall be awarded. But that is to bee vnderstande in this maner, that first the transcript of the said record shalbe by writ remoued into the Chauncerie and then out of the Chauncery shal there be a scire facias awarded, & not out of the tresory as it appeareth, 21. lib. Ass.

Trauers. 26.

21. E. 3. fo. 1.

T. 12. R. 2

21. li. ass.

Issue

Issues mesne.

NOte that if the king haue a title, right or interest to any lands or tenements, his highnes whe he seiseth shal be answered of all the mesne issues and profites from the time of his sayd title, right, or interest growen, and whether it be a right of entre or title of entre it maketh no diuersitie in the kinges case, as for an example, the king entreth for a condition broken, his highnes shalbe answered of all the issues and profites sins the condicion broken, and yet in that case a common person shal not haue the issues and profites but from the time of his entrie. Like law is it if the kinges tenaunt alien in mortmain, and the kinge entreth, but otherwise it is if he entre for mortmain in lands not holden of him vpon a title deuolued vntoo his highnes in defaut of other lords. And these cases appere H. 19. et 41. E. 3. fo. 16. The same law is it where his highnes is entitled to seise for that the lands are of his foundacõ, and alienen contrarie to the statut of west. 2. ca. 41. which geues the writ of contra formâ collationis, in this case his highnes shalbe answered of all the mesne issues growen from the time of the alienacõ, as appereth H. 46. E. 3. And note also that if the king make any graunt which is not sufficient in the law or is deceiued in the making of the same by reason it was made vpon a false suggestion, in his case if this highnes doth reigne this grãt & adnull it iure regis as he may, he shalbe then be answered of all the mesne issues & profits which were lost by reason of the sayde insufficient graunt, as appereth. 11. H 4. But if his highnes bee entitled to any lands nomine destriccionis, there his highnes shall not bee answered of the profites, but from the finding of that title, as in case where the kinges tenant in chief alieneth without

19. E. 3. Ent. cõg. P. 39.

H. 46, E. 3. Forf. P. 18.

11. H. 4. f. 4.

but licence and an office is therof found, in this case his highnes shal not be answered of the profites from the time of that alienation, but onely from the tyme of the findinge of the office, or from the tyme of a Scire facias returned wher the alienatiō is of record, and herof see the booke P.8.e.4.f.4 8.E.4. Like law is where his highnes is to seise the lands of his widow that hath maried her self without his licence. 40.li.Ass. Gard P.36. And note that where the king is to be ānswered of the meine issues and profits perceued and taken of any landes which haue come to sōdry hands sins the kings title first growen to the same, there euery one of them ẏ haue sondrely so perceiued and taken the profits shal answer for his owne time and not one for all, as it appereth in the boke of 46. before remembred. And note also that by the statut of w.2.ca.2. it is prouided that if any spiritual man bring any real action and recouer, that the land recouered shall remayne in the kinges hands vntill such time as it be sued out of his hands by him that recouered, or els by the chiefe lorde and in the meane time the shiriue shal aūswer the kinge in ẏ eschequer of the profites, by which statut whether the collusion bee found or not found, yet the king shal haue the meane issues as it is thought 20.H.6. So it is in a writ iudicial of deceite 20.H.6.f.41 brought against any the king shall haue the issues growen from the time of the first iugement vntill iugement be geuē in the sayd writ of deceit.

¶Some tymes the kynge recouereth of the issue in the allowance of an estraunge tytle, as ẏ the husband beynge the kynges tenant vpon a false suggestion purchaseth licence to alie & to take estate to him & to his wife, & so doth, & afterward dyeth, the wife holdeth her in by title of Suruiuor & occupieth, nowe vpō a Scire facias against the wife, his highnes shal bee answered of all the meane issues since her occupiynge of the ii. parts of the land, and the thyrd part he receiueth and alloweth for her dower. 40.li.Ass.Pl.36.

Note

¶ Note that in a writ of diſceit vpon a recouery in g quod reddat of land where the proces was a grād Cape, if the pleintyfe recouer, he ſhall recouer the land and his damages, but not the iſſues of the land ſynce the fyrſt iudgement, becauſe the kinge ſhall haue them by the graunde Cape, and the writ is accomptable of thē. quod vide titulo diſceit in Fitz. P. 33. & 32. Contrarie lawe is it if there lie no grand Cape in the action, as if the recouerie be in a Scire facias, as it appereth titulo Diſceit in Fitz P. 36. & 27. Preeipe 40. Li. Aſſ. Gard. P. 1.

FINIS

Diuers other prerogatiues therbe, which ỹ kig hath by the order of ỹ comō law ỹ be not wī this ſtatute cōpriſed, a great part wherof vnder ỹ title of Prerogatiue maſter Fitzherbart hath moſt diligētli noted in his great Abridgmēt, & ſo well ordred & placed there, ỹ I doo of purpoſe omit to reherſe them here. The reſt wouldе require ſo longe a ſerche that oneles I had gathered and noted them al redie (as I haue not dōe in dede) I ſhould be faine to peruſe the hole bodie of ỹ comō Lawes for the knowleg therof wherunto o time ſeruethe mee not, where for at this time myne intent is not to medle with them.

Imprynted at Lon-
don in flete ſtrete within temple
Barre at the ſigne of the hand & ſtarre.
by Rychard Tottel, An.
1567.

Cum priuilegio.

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